ROAD LAWS

OF

OHIO

SUPPLEMENT
1925

Highway legislation enacted by the General Assembly
at 1923 and 1925 sessions

COMPLETELY ANNOTATED

OHIO STATE UNIVERSITY
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Ohio. Laws, statutes, etc.

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EXPLANATORY NOTE

The last edition of the road laws of Ohio was issued in 1922. Two regular sessions of the General Assembly have been held since that date and many changes have been made in the road laws.

In response to a demand from local highway officials, this supplement has been prepared, containing all highway laws enacted at the 1923 and 1925 sessions of the General Assembly.

Since most persons interested in road legislation have copies of the 1922 edition of the laws it was deemed advisable to use the same arrangement of chapter headings as found in that edition so far as possible. Where no change has been made in a section appearing in the 1922 edition, this fact is indicated. Entirely new subject matter has been given separate chapter headings. Material in this volume is made accessible in three ways;—(1) a table of contents, which indicates the chapter subjects; (2) a sectional index, which gives the general code sections in numerical order; (3) subject index.

All court decisions and opinions of the attorney general of a later date than 1922 which have not been invalidated by subsequent changes in the law, are cited under the appropriate sections.

In cases where the text of the section is not given because of the fact that no change has been made since 1922, the citations are given under the section number. Where sections of the general code have been repealed subsequent to 1922, this fact is indicated also.

This compilation has been prepared by the Legislative Reference Division of the Ohio State Library in collaboration with the Good Roads Federation at the request of the Director of Highways and Public Works.

TABLE OF CONTENTS

			PAGE
CHAPTER	I.	Department of Highways and Public Works	7-31
CHAPTER	II.	Federal Aid —	
		Supplemental Act of 1922	32-34
		Supplemental Act of 1925	34-35
		Rules and Regulations of Secretary of Agriculture	36-42
CHAPTER	III.	County Commissioners	43-45
CHAPTER	IV.	Road Construction and Improvement by County Commissioners	46-52
CHAPTER	V.	County System of Highways (Green Law)	53-59
CHAPTER	VI.	Improvement of Streets and Alleys outside Municipalities by County Commissioners	60-67
CHAPTER	VII.	County Surveyor	68-73
CHAPTER	VIII.	Township Trustees	74-79
CHAPTER	IX.	Bridges	80-88
CHAPTER	X.	Railway Crossings — Grade Elimination	89-103
CHAPTER	XI.	Motor Trucks and Tractors	104-111
CHAPTER	XII.	Motor Vehicles	112-141
CHAPTER	XIII.	Public Funds	142-153
CHAPTER	XIV.	Tax Rate Limitations	154-168
CHAPTER	XV.	Gasoline Tax	169-176
CHAPTER	XVI.	Motor Transportation Companies	177-195
CHAPTER	XVII.	Mechanics Liens	196-199
CHAPTER	XVIII.	Miscellaneous	200-207

CHAPTER I

Department of Highways and Public Works

SEC. 154-40. (No change since 1922 edition.)

1. Sections 1206 and 7182, General Code, are in *pari materia* and should be construed together. In counties where a resident engineer has been appointed by the state highway commissioner to superintend construction of state highways, the plans and specifications should be kept on file in the office of such resident engineer.

2. By virtue of the provisions of the "Administrative Code," 109 O. L. 105-135, the director of highways and public works is invested with certain powers and duties involving judgment and discretion, independent of the Governor and not subject to be controlled by executive orders.

3. By virtue of Section 2288-2, General Code, no public improvement constructed by the expenditure of state funds can lawfully proceed unless the director of finance shall first certify that there is a balance in the appropriation not otherwise appropriated to pay precedent obligations. In the event the money is in fact in the fund, it is the ministerial duty of the director of finance to make the required certificate, and the discharge of this duty may be compelled by mandamus. State, ex rel v. Donahey et al, 112 O. S. 356. Decided April 17, 1925. State, ex rel. v. Baker, 112 O. S. 356.

SEC. 1178. (No change since 1922 edition.)

1. Property lying within the corporate limits of a city is subject to assessment for highway improvements made under authority of sections 1178 et seq., G. C.

2. Canal property which by act of the General Assembly has been abandoned with the proviso that such property be used by a municipality for street, parking, sewerage and water purposes, is not subject to assessment for highway improvement.

3. Leasehold estates acquired in canal lands under authority of sections 13906 G. C. and related sections, are not subject to assessment for highway improvement. Op. Atty. Gen. (1922), p. 239.

SEC. 1179. Repealed 109 v. 132.

SEC. 1180. Repealed 109 v. 132.

SEC. 1180-1. (No change since 1922 edition.)

SEC. 1181. (No change since 1922 edition.)

SEC. 1181-1. No change since 1922 edition.)

SEC. 1182. (No change since 1922 edition.)

SEC. 1183. Repealed 109 v. 132.

SEC. 1184. (No change since 1922 edition.)

SEC. 1184-5 (No change since 1922 edition.)

SEC. 1185. (No change since 1922 edition.)

SEC. 1185-1. (No change since 1922 edition.)

SEC. 1186. (No change since 1922 edition.)

SEC. 1187. (No change since 1922 edition.)

SEC. 1188. (No change since 1922 edition.)

SEC. 1189. **[Additional inter-county highways and main market roads; vacation and abandonment; maps.]** The inter-county highways and main market roads heretofore established by law, shall continue to be and remain a part of the system of inter-county highways and main market roads of the state unless changed in the manner hereinafter provided.

In addition to the inter-country highways and main market roads heretofore established under authority of law, the director of highways and public works shall have authority to designate additional inter-county highways or main market roads, or change existing inter-county highways or main market roads after notice and hearing as hereinafter provided.

Provided, however, the authority granted herein to the director of highways and public works to abandon all or any part of such inter-county highway or main market road shall not apply to any section of such highway previously constructed by the state co-operatively and taken over by the state for maintenance.

Before establishing any additional main market roads or inter-county highways, or making any changes in existing inter-county highways or main market roads, the director of highways and public works shall give notice by publication in two newspapers of general circulation in each of the counties in which the proposed road or highways to be established is located or in which it is proposed to make such changes, (by publication), once each week for two successive weeks. Such notice shall state the time and place of hearing, which hearing shall be held in the county, or one of the counties, in which said proposed road or some part thereof is situated, or in which it is proposed to make such changes, and which hearing shall be open to the public, and which notice shall further state the route of the proposed inter-county highway or main market road or the change proposed to be made in an existing inter-county highway or main market road. The director of highways or an engineer designated by him shall attend such hearing and hear any proof offered on such matter. Any changes made in existing inter-county highways or main market roads by the director of highways or any additional inter-county highways or main market roads established by him following such hearing, shall be certified to the counties interested therein, and a report of such change or addition filed in the office of the governor, and the report of the director of highways making such change or establishing such road shall be placed on file in the office of the department.

In no event shall the main market road mileage of the state be increased under any of the above provisions to exceed three thousand five hundred miles, and in no event shall the combined main market road and

inter-county highway mileage be increased to exceed eleven thousand miles.

The director of highways, upon petition of the county commissioners of the counties traversed thereby or upon petition of citizens of such counties, is authorized to officially assign to a main market road a distinctive name commemorative of an historical event or personage, or to officially assign thereto a commonly accepted and appropriate name by which such road is known. The director of highways and public works shall be authorized, upon giving notice and holding a hearing as hereinbefore provided, to abandon as an inter-county highway, any inter-county highway or part thereof which he may determine is of minor importance, or which traverses territory adequately served by another inter-county highway, or which lies in close proximity to another inter-county highway. A report covering such action of the director shall be filed in the office of the governor, and a copy thereof filed in the office of the department, and the director shall certify his action to the county or counties in which such highway or portion thereof so abandoned is situated.

Within one hundred and twenty days after the taking effect of this act the director of highways and public works shall make, or cause to be made a map showing thereon, by appropriate numbering or other designations, all the inter-county highways and main market roads within the state, together with the continuations of such inter-county highways and main market roads over the streets into or through the municipalities which are on the lines of such inter-county highways and main market roads. Said map shall also show or designate such part or parts of the inter-county highways and main market roads as are "state highways" within the meaning of section 1226 of the General Code of Ohio.

When any street into or through a municipality is designated on such map as a continuation of any inter-county or main market road, it shall thereafter be deemed to be a state road within the meaning and for the purposes of section 7557 of the General Code.

The director shall keep such map on file in his office and shall, from time to time, cause the same to be corrected and revised to show all changes and additions to the date of such correction. A copy of such map, certified to by the director as a correct copy of the map on file in his office, shall be admissible as evidence in any court of the state to prove the existence and location of the several inter-county highways and main market roads of the state.

HISTORY: — 106 v. 626; 108 v. Pt. I, 482; 111 v. 278.

SEC. 1189-1. **[Designation and description of the Atlantic and Pacific highway.]** That the road now known as inter-county high-

way Number Seven, extending along the Ohio River between Cincinnati, Ohio, and Gallipolis, Ohio, and through the counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence and Gallia and through the municipalities of Cincinnati, New Richmond, Neville, Higginsport, Ripley, Aberdeen, Manchester, Portsmouth, Ironton, Proctorville and Gallipolis, in the state of Ohio, is hereby declared to be a main market road to be known and designated as the Atlantic and Pacific Highway; provided, however, that in Rome township, Lawrence county, the said Atlantic and Pacific Highway follow inter-county Highway No. 509, instead of inter-county Highway No. 7. History:—110 v. 335.

SEC. 1190. (No change since 1922 edition.)

SEC. 1190-1. (No change since 1922 edition.)

SEC. 1190-2. **[Director of highways authorized to lease equipment to county commissioners.]** The director of highways and public works shall be authorized to lease to the county commissioners of any county, upon such terms, rentals and conditions as to him seem proper, surplus automobiles, motor trucks, road machinery, equipment, and supplies received from the Federal government, and also any and all parts necessary or incidental to the proper maintenance and equipment of such automobiles, trucks and machinery, when in the judgment of the director of highways and public works, such articles are not required in the prosecution of any work then being carried on under the direct control of the state highway department. The county commissioners of any county shall be authorized to execute any and all such leases as to them shall seem proper, and shall provide suitable places for housing and storing such automobiles, trucks, road machinery and equipment, and shall keep such automobiles, trucks, machinery and equipment in reasonable repair. Any expense incurred by the county commissioners in carrying out the provisions of this section shall be paid from the road repair fund or other road funds of the county. When any such automobiles, motor trucks, road machinery and equipment, leased or rented to the county commissioners under the provisions of this section, have become damaged or worn out so as to be unfit for further use, the county commissioners shall compile an itemized list of the same and transmit such list to the director of highways and public works. If the director finds that the vehicles and equipment enumerated in such list are not in serviceable condition, he may order the same abandoned for road purposes and transfer the title thereof to the county commissioners of the proper county. Upon the receipt of such authority from the director of highways and public works, the county commissioners may trade such abandoned vehicles and equipment as part payment on the purchase price of new vehicles and equipment which shall be the property of the county.

HISTORY:—108 v. Pt. I, 1239; 110 v. 412.

Sec. 1191. (No change since 1922 edition.)

The enactment of section 154-37 G. C. (109 O. L. 105; 116) did not operate to transfer to the Department of Finance the power conferred on the Department of Highways and Public Works by sections 1191, 1224, and 1231 G. C. to purchase machinery, tools, equipment, supplies and material for the purposes named in the latter sections; or the power conferred on the Department of Highways and Public Works is to exercise these functions of purchase, sale and exchange, subject, primarily, to the requirements of sections 1191, 1224 and 1231, and secondarily to the requirements of section 6 of the General Appropriation Act, 109 O. L. 415. Op. Atty. Gen. (1912), p 63.

1. The various steps before a board of county commissioners and the director of highways and public works, in connection with a state aid road improvement project under the provisions of Section 1191 of the General Code and related sections, wherein it is sought to construct, improve, maintain or repair an inter-county highway, constitute a "proceeding" within the contemplation of Section 26 of the General Code.

2. Such proceeding is pending, within the contemplation of said Section 26 of the General Code (a) when the owners of twenty-five per cent of the lineal feet abutting on the inter-county highway petition the county commissioners for its construction, improvement, maintenance or repair, under the provisions of the state aid road law; or (b) when the county commissioners, without the presentation of any petition, or the township trustees, under the conditions as set out in Section 1192 of the General Code, make application to the director of highways and public works for aid in the construction, improvement, maintenance or repair of an inter-county highway, under the provisions of said law. Op. Atty. Gen. (1924), p. 378.

Sections 1191, 1204, and 1214, General Code, providing for the construction of main highways, inter-county roads, and state aid therefor, do not violate the Fourteenth Amendment to the constitution of the United States, prohibiting laws depriving persons of property without due process of law.

The fact that county commissioners may, under these sections, apply for state aid and proceed to the construction of the improvement without a petition of the abutting property owners, or without notice to such property owners, does not render the act unconstitutional.

The provisions that notice must be given abutting property owners, and a hearing had on their complaint against assessment for the improvement, before the same is levied upon their land, and further the fact that they may have recourse to the court to enjoin the illegal levy or collection of assessments, accords them the protection of "due process of law."

The legislature has delegated to the county commissioners and the state highway department discretion in the construction of roads and the levying of assessments, which will not be interfered with by the courts, unless a clear abuse of discretion is shown.

What may be the proper burden to be borne by the abutting property owner in the construction of hard surfaced roads, is a political and legislative question, and the acts of the proper authorities will not be enjoined so long as the assessments do not exceed the benefits, or the limit fixed by the Statute.

Hamlet et al v. County Commissioners 24 O. N. P. (N. S.) 161.

The statutory provision that applications for the granting of state aid in improving inter-county highways shall be filed prior to March 1 is directory only, and such an application may be received and favorably acted on although filed at a later date.

The requirement of Section 11 of Article XII of the Constitution that pro-

vision must be made in case of all bond issues of the state and its subdivisions for the levying and collecting annually by taxation "an amount sufficient to pay the interest on said bonds and to provide a sinking fund for their final redemption at maturity," is satisfied in the case of road improvement bonds when an apportioned assessment is made in amount sufficient to meet these charges, notwithstanding no levy therefor was made in the bond resolution.

It is not for the courts to interfere with or undertake to change the policy instituted by the General Assembly of levying heavy assessments for road improvements; and in view of the assessments levied for other roads in the same county, the court cannot say that an assessment of $9 to $14 per acre for improvement of an inter-county is excessive.

Dix v. Shoemaker et al. 24 O. N. P. (N. S.) 321.

SEC. 1192. (No change since 1922 edition.)

SEC. 1193. (No change since 1922 edition.)

Where township trustees pass a resolution providing for the payment of a certain part of the cost of a road improvement by the township and a certain part by the abutting landowners, a member of such board, owning land abutting on such improvement within his township, is disqualified from offering a resolution at a subsequent meeting and casting the deciding vote therefor by which the amount to be paid by abutting landowners is reduced, and the amount to be paid by the township is increased, and which inures to his own pecuniary advantage in a substantial sum.

Oliver v. Brill, Treas., 14 Ohio App. 312.

SEC. 1193-1. (No change since 1922 edition.)

A village ordinance consenting that a board of county commissioners might construct a highway improvement through such village (Section 6949 G. C.) is not effective as giving the consent provided for by section 1193-1 G. C., relating to improvements to be carried out by the Department of Highways and Public Works on the state aid plan.

Op. Attorney General (1922), p. 872.

A part or a public highway in a village, which, under the provisions of the General Code is a state road, is under the care and control of the state highway department, which is charged with the duty of maintaining the same, and the mere failure of the village to repair such road, does not make the village liable in damages for an injury to a traveler on the road caused by said road being out of repair.

Charles M. Younts v. Avon Lake Village, 23 O. L. R. 309. Decided April 17, 1925.

SEC. 1193-2. (No change since 1922 edition.)

A village street constituting part of the line of an intercounty highway or main market road comes within the purview of Section 1198 G. C. in the matter of improving a highway to a greater width than that contemplated by the plans of the Department of Highways and Public Works, when such greater width is requested by abutting owners to be provided at their expense. Accordingly, the county commissioners making application for the improvement, may grant a petition of property owners for the additional width, and may assess abutting property owners for the additional width. Section 1193-2 G. C., providing for assessment of cost by the village, is not exclusive of Section 1198 G. C. when the village itself is not sharing in the cost of the additional width.

Op. Atty. Gen. (1922), p. 689.

SEC. 1193-3. **[Selection of route through village made by director of highways and public works.]** When a village has consented to the improvement of an extension of an inter-county highway or main market road into or through such village, the selection of the route to be improved into or through such village, and of the particular streets and public ways to be followed by such continuation into or through such village, shall be made by the director of highways and public works.

HISTORY: — 111 v. 280.

SEC. 1194 to 1197. (No change since 1922 edition.)

SEC. 1197-1. **[State aid for bridges and culverts.]** In case a street in a municipality constitutes an extension or continuation of an inter-county highway or main market road into or through a municipality and there is on such street and within the corporate limits of such municipality a bridge or culvert with the construction or maintenance of which the county commissioners are charged by law, such county commissioners may apply for and the director of highways and public works may in his discretion grant aid not exceeding one-half of the cost in the construction, re-construction, maintenance or repair of such bridge or culvert from any fund available for the construction, improvement, maintenance or repair of inter-county highways or main market roads. The application shall be made and the proceedings thereon had in conformity with the provisions of law relating to the state highway department. The county's share of the cost of an improvement under the provisions of this section may be paid out of any fund available for the construction, improvement, maintenance or repair of inter-county highways and main market roads. The authority granted in this section shall be in addition to and not in any wise limited by the provisions of sections 5638 to 5644 inclusive, of the General Code.

HISTORY: — 110 v. 452.

A bridge wholly or partly within the limits of a city and on an inter-county highway or main market road, with the construction and maintenance of which the county commissioners are charged by law, may be constructed and maintained under what is commonly known as the state aid road laws.

Op. Atty. Gen. (1924), p. 347.

SEC. 1198. (No change since 1922 edition.)

A village street constituting part of the line of an inter-county highway or main market road comes within the purview of section 1198 G. C. in the matter of improving a highway to a greater width than that contemplated by the plans of the Department of Highways and Public Works, when such greater width is requested by abutting owners to be provided at their expense. Accordingly, the county commissioners making application for the improvement, may grant a petition of property owners for the additional width, and may assess abutting property owners for the additional width. Section 1193-2 G. C., providing for assessment

of cost by the village, is not exclusive of section 1198 G. C. when the village itself is not sharing in the cost of the additional width.

Op. Atty. Gen. (1922), p. 689.

SEC. 1199. (No change since 1922 edition.)

SEC. 1200. (No change since 1922 edition.)

1. Under the statutes commonly known as "the state aid road laws", it is within the discretion of the Director of Highways and Public Works to determine the policy as to kind or type of road to be built.

2. When plans, specifications, profiles and estimates have been endorsed with the approval of the Director of Highways and Public Works and submitted to the county commissioners for their adoption, the authority of such county commissioners, under the provisions of Section 1200 of the General Code, is limited to the adoption of such plans, specifications, profiles and estimates as a whole, or to the refusal to adopt the same as a whole. Such county commissioners are without authority to adopt such plans, specifications, profiles and estimates in part, and to refuse to adopt the same in part.

3. A certification of funds by a county auditor in an amount sufficient to cover the most expensive type of a proposed highway improvement, is sufficient to and does meet the requirements of Section 5660 of the General Code in connection with types of such proposed highway improvement of a lesser cost.

4. A final resolution appropriating an amount of money sufficient to cover that part of the cost and expense of a proposed highway improvement in the first instance to be assumed by the county, and which final resolution also contains an agreement on the part of the county commissioners to assume in the first instance the share of the cost and expense over and above the amount to be paid by the State, which amount is sufficient to cover the most expensive type of a proposed highway improvement, and such final resolution is sufficient to and does meet the requirement of Section 1218 of the General Code in connection with types of such highway improvement of a lesser cost.

Op. Atty. Gen. (1924), p. 271.

SEC. 1201. (No change since 1922 edition.)

SEC. 1202. **[Improvement without co-operation with local authorities; proceedings.]** If the director of highways and public works proposes to improve an inter-county highway or main market road without the co-operation of the county commissioners or township trustees, and it is necessary as a part of the proposed improvement of the said highway, bridge or culvert, to acquire or appropriate lands or property, and such director is unable to agree with the owner or owners of such land or property as to the value thereof, he may proceed to condemn such land or property in the manner hereinbefore fixed for county commissioners and township trustees. Such director may condemn materials for road purposes in like manner.

The director of highways and public works, in the maintenance, repair or reconstruction of inter-county highways and main market roads, shall be authorized to change the line of the improvements from that followed by the existing highway or road whenever such change is

necessary, in his judgment, to eliminate dangerous curves, sharp angles or steep grades. He shall also be authorized to widen the right of way occupied by such road or highway whenever in his judgment a wider right of way is needed. For the purpose of acquiring any real estate that may be needed for any of such purposes, such director is authorized to pay to the owner or owners thereof, such reasonable sum as may be agreed upon between him and such owner or owners. If such director is unable to agree with the owner or owners of such real estate as to the value thereof, he may proceed to condemn such real estate in the manner provided in section 1201 of the General Code with respect to the condemnation by county commissioners or township trustees of right of way for state highway improvements.

The director of highways shall be authorized to purchase or lease land along or in the vicinity of state highways, which in his judgment may be required in order to furnish storage facilities for materials or equipment employed in the maintenance and repair of such state highways, and to pay from the state maintenance and repair fund such reasonable price for such real estate as may be agreed upon between him and the owner or owners thereof. He shall be authorized to erect on such lands such sheds or other structures as in his judgment may be required.

HISTORY: — 106 v. 632; 111 v. 80.

SEC. 1203. (No change since 1922 edition.)

SEC. 1204. (No change since 1922 edition.)

Sections 1191, 1204, and 1214, General Code, providing for the construction of main highways, inter-county roads, and state aid therefor, do not violate the Fourteenth Amendment to the constitution of the United States, prohibiting laws depriving persons of property without due process of law.

The fact that county commissioners may, under these sections, apply for state aid and proceed to the construction of the improvement without a petition of the abutting property owners, or without notice to such property owners, does not render the act unconstitutional.

The provision that notice must be given abutting property owners, and a hearing had on their complaint against assessment for the improvement, before the same is levied upon their land, and further the fact that they may have recourse to the court to enjoin the illegal levy or collection of assessments, accords them the protection of "due process of law."

The Legislature has delegated to the county commissioners and the state highway department discretion in the construction of roads and the levying of assessments, which will not be interfered with by the courts, unless a clear abuse of discretion is shown.

What may be the proper burden to be borne by the abutting property owner in the construction of hard surfaced roads, is a political and legislative question, and the acts of the proper authorities will not be enjoined so long as the assessments do not exceed the benefits, or the limit fixed by the Statute.

Hamlet et al. v. County Commissioners 24 O. N. P. (N. S.) 161.

SEC. 1205. (No change since the 1922 edition.)

SEC. 1206. **[Advertisement for bids for improvement; bond; award.]** Upon receipt of a certified copy of the resolution of the county commissioners or township trustees that such improvement be constructed under the provisions of this chapter, the director of highways and public works shall advertise for bids for two consecutive weeks in two newspapers of general circulation and of the two dominant political parties published in the county or counties in which the improvement, or some part thereof is located, if there be any such papers published in said counties, but if there be no such papers published in said counties then in two newspapers having general circulation in said counties, and such director shall also have authority to advertise for bids in such other publications as he may deem advisable. Such notices shall state that plans and specifications for the improvement are on file in the offices of such director and the county surveyor, and the time within which bids therefor will be received.

Each bidder shall be required to file with his bid a certified check for an amount equal to five per cent. of the estimated cost, but in no event more than ten thousand dollars, payable to the director of highways and public works, which check shall be forthwith returned to him in case the contract is awarded to another bidder, or in the case of a successful bidder when he has entered into a contract and furnished a bond as required by law. No bidder shall be required to file a signed contract with his bid, or to enter into a contract or furnish the bond required by section 1208 of the General Code until the bids have been opened and he has been notified by such director that he has been awarded the contract.

The director of highways and public works shall award the contract to the lowest and best bidder.

Such award shall be made by said director within ten days after the date on which the bids are opened and the successful bidder shall enter into a contract and furnish a bond as required by law within ten days after he is notified that he has been awarded the contract.

HISTORY: — 106 v. 634; 108 v. Pt. I, 486; 111 v. 81.

The provisions of Section 1206 G. C. to the effect that state aid highway contracts entered into by the Department of Highways and Public Works shall be advertised for letting for "two consecutive weeks," do not require that such advertisement, when inserted in a daily newspaper, shall be insertd on the same day of each week; hence an advertisement for bids to be received on Saturday, April 8th, is sufficient if inserted on Wednesday, March 22nd, and Thursday, March 30th.

Op. Attorney General (1922), p. 247.

See Opinions of Attorney General (1923), p. 719, cited under Section 1209.

The provisions of Section 1206, General Code, by apt language in that section contained, are applicable to improvements instituted by a resolution of the commissioners of a county or the trustees of a township, and there is nothing in

that section, or any other sections of Part First Title III, Division II, Chapter 18 of the General Code, entitled State Highway Department, which makes them applicable to resurfacing or reconstructing conducted by the state highway commissioner under Section 1224, General Code.

Shafer v. Streicher, 105 O. S., 528.

The requirement of Section 1206, General Code, that "the State highway commissioner shall advertise for bids for two consecutive weeks," is mandatory, and a contract entered into on June 14, after advertisement in two weekly newspapers of the county on June 6 and June 13, is invalid.

In an action brought to recover damages for the failure to enter upon and complete a contract for a highway improvement, such invalidity of the contract is a complete defense.

State v. Kuhner & King, 107 O. S., 406.

NOTE: — The above decision was rendered April 24, 1922, while Section 1206 was amended in 1925. (111 v. 81.)

See 112 O. S. 356 as cited under Sec. 154-40.

SEC. 1207. (No change since 1922 edition.)

SEC 1207-1. (No change since 1922 edition.)

SEC. 1208. (No change since 1922 edition.)

1. Funds in the county treasury appropriated for and applicable to contracts entered into by the county for highway improvement are subject to the provisions of Sections 8324 to 8331 G. C., allowing liens in favor of sub-contractors, laborers, material-men and mechanics.

2. By reason of the amendment of Section 1208 G. C., in 109 O. L. 159, contracts entered into by the state under the state aid highway laws (Sections 1177 to 1231-7 G. C.) subsequent to the going into effect of said amendment, are not subject to lien under the provisions of Sections 8324 to 8331 G. C., or otherwise, either as to funds in the state treasury or in the county treasury applicable to such contracts.

Op. Attorney General (1922), p. 1084.

Where township trustees pass a resolution for the payment of a certain part of the cost of a road improvement by the township and a certain part by the abutting land owners, a member of such board, owning land abutting land on such improvement within his township, is disqualified from offering a resolution at a subsequent meeting and casting the deciding vote therefor by which the amount to be paid by abutting land owners is reduced, and the amount to be paid by the township is increased, and which inures to his own pecuniary advantage in a substantial sum.

Oliver v. Brill, 32 O. C. A. 129.

A surety upon the bond of a contractor for road improvement given under Section 1208, General Code, is liable for gasoline and oil furnished the contractor for use in motor trucks engaged in transporting material for the construction of the road under the contract.

State of Ohio v. The United States Fidelity & Guaranty Co., 29 O. C. A. 346.

SEC. 1208-1. (No change since 1922 edition.)

SEC. 1208-2. (No change since 1922 edition.)

SEC. 1208-3. (No change since 1922 edition.)

SEC. 1208-4. (No change since 1922 edition.)

SEC. 1208-5. (No change since 1922 edition.)

SEC. 1209 (No change since 1922 edition.)

1. The statutes of Ohio do not confer authority upon the Director of Highways and Public Works, or any other executive officer of the state, to cancel or abandon a contract entered into by the Director of Highways and Public Works, in pursuance of the state aid plan in carrying out highway improvements.

2. A contractor who bids at a letting of the Director of Highways and Public Works for the construction of a road improvement has a right to assume that, if awarded the contract, under his bid, he will within a reasonable time be permitted to begin the work and to carry it to completion without undue delays and hindrances over which he has no control.

3. Whether or not a delay in the execution of a contract is an unreasonable delay is, as a general rule, a question of fact, dependent upon all the facts and circumstances surrounding and affecting the particular transaction.

4. One possessing the right to rescind a contract on the ground that there has been an unreasonable delay in the execution of such contract, is required to exercise his right within a reasonable time after discovering the facts justifying recission.

5. In a case where the award was made on February 17, 1923, and the execution of the contract is delayed until June 8, 1923, owing to the delay of the Director of Finance in certifying the funds, and the contractor has indulged in a vacillating or hesitating course of conduct and does not reject and rescind the contract until July 2, 1923, it cannot be held, as a matter of law, that such delay was unreasonable and justified a rescission of the contract, or that the delay was taken advantage of by the contractor with the measure of promptness as is required by law.

Op. Atty. Gen. (1923), p. 719.

SEC. 1210. (No change since 1922 edition.)

SEC. 1211. (No change since 1922 edition.)

Before the right of injunction is available to a property owner assessed for a road improvement, it must appear that he has no adequte remedy at law.

Section 1211 et seq. and Section 1214, General Code, relating to road improvements, deal with the same subject-matter, are in pari materia, and therefore must be construed together, each given such reasonable construction as to give the proper force and effect to each and all of said statutes.

Where the Legislature's language is clear there is nothing for the judiciary to construe. It is solely the duty of the courts to reasonably apply the statute so as to effect its obvious purpose. Whether the land to be assessed shall be limited to abutting property owners within a mile of the improvement, is a matter vested in the discretion of the commissioners by the statute.

Under the above sections the area or lands to be assessed may be changed, upon due notice thereof, at any time before the assessment is made.

A notice given to the property owners "along" a road that is being improved is not sufficient in fact or law to charge notice to all property owners within the one-mile district on either side of such road.

Maxfield v. Brooks, 110 O. S. 566.

SEC. 1212. (No change since 1922 edition.)

When proceeding under Section 1212 G. C., and related sections, in the matter of requisitions for the payment to contractors of estimates due them for work on state aid highway improvements, the Director of Highways and Public Works is not required to divide the requisitions for each estimate between county and state in the proportion that each is bearing a share of the cost, but may, in his discretion, draw upon either county or state for the whole of an estimate until an aggregate of ninety per cent of the share of the county or state is exhausted. The same rule applies to requisitions in payment of superintendence and inspection (Section 1219 G. C.,) save that the ninety per cent limitation is not applicable.

Op. Attorney General (1922), p. 971.

SEC. 1212-1 (No change since the 1922 edition.)

SEC. 1212-2. (No change since 1922 edition.)

SEC. 1213. **[When state shall pay sixty percentum.]** Whenever there are one or more improvements to be made in a county, the state shall pay sixty per cent of the cost and expense thereof, provided an amount sufficient for that purpose has been appropriated by the state for expenditure in such county.

Whenever there are one or more improvements to be made in a county, and sixty per cent of the cost and expense thereof exceeds the amount appropriated by the state for expenditure in such county, then the state shall pay such proportion of the cost of said improvement or improvements as may be agreed upon by the director of highways and public works and the county commissioners or township trustees.

HISTORY: — 106 v. 574; 111 v. 130.

SEC. 1213-1. **[Counties in which state may assume to pay 90 per cent of improvement.]** In any county in which on the twentieth day of December of any year the aggregate of the tax duplicate for real estate and personal property is twenty-two million dollars or less, and in which county there are at least seven hundred miles of public highways, the director of highways and public works may, if he deems it proper, enter into an agreement with the county commissioners of such county at any time during the ensuing calendar year, by the terms of which agreement the state may assume and pay not more than ninety per cent of the cost of any improvement petitioned for by such county commissioners.

In any county in which on the twentieth day of December of any year the aggregate of the tax duplicate for real estate and personal property is more than twenty-two million dollars and less than thirty million dollars and in which county there are at least seven hundred miles of public highways, the director of highways and public works may, if he deems it proper, enter into an agreement with the county commissioners of such county at any time during the ensuing calendar year, by the terms of which agreement the state may assume and pay not more than seventy-

five per cent of the cost of any improvement petitioned for by such county commissioners.

In any case in which the authority conferred by this section is exercised by the director of highways and public works, that part of the cost and expense of the improvement assumed in the first instance by the county shall be divided among the county, interested township or townships and property owners in the following proportions: five-eighths thereof shall be paid by the county, one-fourth thereof shall be paid by the interested township or townships and one-eighth thereof shall be specially assessed. The county commissioners and the trustees of the interested township or townships may, however, agree upon a different division of that part of the cost and expense to be paid by the county and such townships.

HISTORY: — 107 v. 128; 108 v. Pt. I, 490; 111 v. 131.

SEC. 1214. **[How cost and expense apportioned; publication of apportionment; hearing.]** Except as otherwise provided in this chapter, the county shall pay twenty-five per cent of all cost and expense of the improvement. Ten per cent of the cost and expense of such improvement, except the cost and expenses of bridges and culverts shall be apportioned to the township or townships in which such road is located. If the improvement lies in two or more townships, the amount to be paid by each shall be apportioned according to the number of lineal feet of the improvement lying in each township. Five per cent of the cost and expense of the improvement, excepting therefrom the cost and expense of bridges and culverts, shall be a charge upon the property abutting on the improvement, provided the total amount assessed against any owner of abutting property shall not exceed twenty per cent of the valuation of such abutting property for the purposes of taxation. Provided, however, that the county commissioners by resolution adopted by unanimous vote may increase the per cent of the cost and expense of the improvement to be specially assessed and may order that all or any part of the cost and expense of the improvement contributed by the county and the interested township or townships be assessed against the property abutting on the improvements; but in no event, except within municipalities, shall more than fifteen per cent of the total cost and expenses of the improvement, exclusive of the cost and expenses of bridges and culverts, be specially assessed unless, a consent in writing to any additional increases, over and above such fifteen per cent and signed by at least fifty-one per cent of the land or lot owners, residents of the county, who are to be especially assessed for said improvement, shall be first filed with said county commissioners. In determining whether the required number of owners have signed any such consent, owners of life and leasehold estates shall not be counted; minors and other persons under disability shall not be counted unless represented by legal guardians,

in which case the action of such guardians shall be binding upon such persons, and all tenants in common of any undivided estate, resident of the county, shall be counted as a unit. Provided further, that the county commissioners by a resolution may make the assessment of five per cent or more, as the case may be, of the cost and expense of the improvement against the real estate within one-half mile of either side of the improvement or against the real estate within one mile of either side of the improvement, or against the real estate situated within one and one-half miles of either side of such improvement, according to the benefits accruing to such real estate. Township trustees shall have the same power to increase the per cent to be specially assessed and to change the assessment area where the improvement is made on their application. The county commissioners or township trustees upon whose application the improvement is made shall cause the county surveyor to make a tentative apportionment of the amount to be paid by the owners of the property specially assessed which apportionment shall be made according to the benefits accruing to the land so located. The county surveyor shall file such apportionment with the county commissioners or township trustees for the inspection of the persons interested. Before adopting the estimate so made and reported the commissioners or trustees shall publish once each week for two consecutive weeks in some newspaper published in the county and of general circulation in the township where the improvement is located notice that such estimated assessments has been made and that the same is on file in the office of the county commissioners or with the township trustees and the date when objection, if any, will be heard to such assessment. If any owner or property affected thereby desires to make objections he may file his objection to said assessment in writing with the county commissioners or township trustees, as the case may be, before the time for said hearing. If any objections are filed the county commissioners or township trustees shall hear the same and act as an equalizing board and they may change said assessment if in their opinion any change is necessary to make the same just and equitable, and such commissioners or trustees shall approve and confirm said assessments as reported by the surveyor or modified by them. Such assessments when so approved and confirmed shall be a lien on the land chargeable therewith. County commissioners shall be required to assume on behalf of the county all that part of the cost and expense of an improvement not assumed by or assigned by law to the state or to the township and not specially assessed.

HISTORY: — 106 v. 637; 107 v. 129; 111 v. 181.

Under the provisions of Section 1214 G. C. and related sections dealing with assessment of lands in connection with state aid highway improvements, benefited real estate within the assessment zone and lying within the corporate limits of a

village is subject to assessment notwithstanding that the highway improved may not lie within the corporate limits of such village.

Op. Attorney General (1922), p. 147.

When county commissioners acting under Section 1214 G. C. and related sections, make an assessment upon property within a village in connection with a state aid highway improvement, and part of the property to be assessed consists of abutting unplatted farm lands, the tax value of the whole farm is the amount upon which the thirty-three per cent. limitation named in Section 1214 G. C. is calculated. The commissioners are without authority to treat that part of the farm running to the depth, or average depth, of nearby platted lots, as the unit for applying said thirty-three per cent. limitation. In apportioning the assessment however, the commissioners may consider whether the farm to its entire depth is benefitted in the same proportion as platted lots of lesser depth than the farm.

Op. Attorney General (1922), p. 937.

See Opinions of Attorney General (1923), p. 409 cited under Section 1214-3.

Where county commissioners have fully complied with the provisions of Section 1214, General Code, in fixing assessments upon landowners for the improvement of an inter-county highway, and given notice thereof as required by that section and have not otherwise exceeded their statutory authority, a landowner may not enjoin the collection of the assessment under authority of Section 12075, General Code, when he has failed to file objections thereto with the county commissioners as required by the former section.

The provisions of Section 1214, General Code, giving the owner the right to file such objections, and authorizing the board of county commissioners to change assessments so as to make the same just and equitable, furnish the owner an adequate remedy at law, which if the proceedings are otherwise legal, he must pursue before resorting to a court of equity for relief.

Bashore v. Brown, Treas., 108 O. S., 18.

NOTE: The above decision was rendered May 22, 1923, while Section 1214 G. C. was amended in 1925. (111 v. 131).

See 110 O. S. 566, cited under Section 1211.

The county commissioners may not appropriate any part of the money from the two mill road levy not otherwise appropriated for the county's, township's or property owner's share of the cost of the improvement temporarily so that the county auditor may certify the money is on hand for the purpose of letting a contract, when it is not intended that this money shall go into the improvement.

The county commissioners may not increase the cost and expense of an improvement under Section 1214 to more than the amount assigned by law, unless the township trustees should agree to such increase.

Op. Atty. Gen. No. 2839, Oct. 6, 1925.

See 24 O. N. P. p. 161, cited under Section 1191.

SEC. 1214-1. (Repealed 111 v. 134.)

SEC. 1214-2. (Repealed 111 v. 134.)

SEC. 1214-3. **[When special assessments exceed 15%, county commissioners authorized to reduce same to less than 15% by action of majority of board.]** In any county in which the county commissioners, under authority of section 1214 of the General Code, have prior to the taking effect of this act increased the per cent of the cost and ex-

pense of any road improvement to be specially assessed to more than fifteen per cent of the total cost and expense of such improvement, excepting therefrom the cost and expense of bridges and culverts, such county commissioners shall, at any time after the taking effect of this act, be authorized and empowered to reduce such special assessments to not less than fifteen per cent of the total cost and expense of the improvement, excepting therefrom the cost and expense of bridges and culverts. Such action shall require a majority vote of said board of county commissioners, and shall be taken only in the event such board shall find, and shall declare by a resolution adopted by a majority vote thereof, that the special assessments previously made are excessive in view of the benefits conferred by said improvement. Such action shall not be held to in any way affect or impair the obligation of the county to pay the interest upon and redeem at maturity any bonds issued in whole or in part in anticipation of the collection of any special assessments so reduced. Any board of county commissioners making any such reduction in special assessments shall assume on behalf of the county the entire amount by which such special assessments are reduced, and shall at the time such reduction is ordered provide for the levy of a tax upon all the taxable property of the county annually under the provisions of section 1222 of the General Code or other appropriate section thereof sufficient to meet any deficiency in the interest and redemption fund for any bonds issued by the county, which deficiency is occasioned by such reduction in assessments, and also sufficient to make refund of the amounts remitted on any special assessments already paid. Refunds of amounts remitted on special assessments already paid shall be made from the proceeds of such tax, upon the allowance of the county commissioners and reductions in unpaid special assessments shall be certified to the county auditor by the county commissioners, and shall be entered by the county auditor upon the duplicate upon which such special assessments have been placed. Such reductions in unpaid special assessments shall not be effective, however, and shall not be entered upon such duplicate until taxes levied as hereinbefore provided shall have come into the county treasury in an amount sufficient to provide for any defiency in the interest and redemption fund for any bonds issued in anticipation of the collection of such special assessments. Any reduction in assessments made under the provisions of this section shall be uniform in percentage throughout the assessment area. Taxes already levied and collected under section 1222 of the General Code and which are unappropriated for any other purpose and against which no liabilities exist, may be used for the purpose of this section.

HISTORY: — 110 v. 363.

1. County commissioners in a county in which said commissioners have, prior to the taking effect of Section 1214-3 of the General Code, 110 Ohio Laws,

163, and under the authority of Section 1214 of the General Code, increased the per cent of the cost and expense of any road improvemnt to be specially assessed to more than fifteen per cent of the total cost and expense of such improvement, excepting therefrom the cost and expense of bridges and culverts, are authorized and empowered, under said Section 1214-3 of the General Code, at any time after the taking effect of said section, to reduce such special assessments to not less than fifteen per cent of the total cost and expense of the improvment, excepting therefrom the cost and expense of bridges and culverts.

2. County commissioners, upon the adoption of a resolution by a majority vote are authorized and empowered to make such reduction in cases where the improvement has been made and the assessments collected prior to the passage of said Section 1214-3 of the General Code. As a preliminary condition, said county commissioners should find and declare in said resolution that the special assessments previously made are excessive in view of the benefits conferred by the improvement.

3. The refund made in pursuance to such reduction so made by the county commissioners is payable to the person or persons who paid the assessment or a part thereof.

Op. Atty. Gen. (1924) p. 409.

SEC. 1215. (No change since 1922 edition.)

SEC. 1216. (No change since 1922 edition.)

SEC. 1216-1. (No change since 1922 edition.)

SEC. 1217. **[Waiver by commissioners and trustees.]** The county commissioners of a county in which a highway is constructed or improved, under the provisions of this act, may, by resolution waive a part or all of the apportionment of the cost and expense of such highway as herein provided to be paid by the township or townships and assume a part or all of the cost and expense of such highway improvement, in excess of the amount received from the state up to the entire cost and expense of such improvement without any assessment or charge whatever upon the township or townships. The township trustees of a township in which a highway is constructed under the provisions of this chapter, may, by resolution, waive a part or all of the apportionment of the cost and expense of such highway as herein provided to be paid by the county, and assume any part or all of the cost and expense of such highway improvement, in excess of the amount received from the state without any assessment upon the county.

Where the application for said improvements is made by the township trustees, the state may assume all or any part of the county's proportion of the cost of said improvement. In no case shall the property owners abutting upon said improvement be relieved by the state, county or township, from the payment of five per cent of the cost and expense of such improvement, excepting therefrom the cost and expense of bridges and culverts, provided the total amount assessed against any abutting property does not exceed twenty per cent of the valuation of such abutting property for the purpose of taxation.

HISTORY: — 106 v. 638; 111 v. 133.

SEC. 1218. (No change since 1922 edition.)

1. Under the statutes commonly known as "the state aid road laws", it is within the discretion of the Director of Highways and Public Works to determine the policy as to kind or type of road to be built.

2. When plans, specifications, profiles and estimates have been endorsed with the approval of the Director of Highways and Public Works and submitted to the county commissioners for their adoption, the authority of such county commissioners, under the provisions of Section 1200 of the General Code, is limited to the adoption of such plans, specifications, profiles and estimates as a whole, or to the refusal to adopt the same as a whole. Such county commissioners are without authority to adopt such plans, specifications, profiles and estimates in part, and to refuse to adopt the same in part.

3. A certification of funds by a county auditor in an amount sufficient to cover the most expensive type of a proposed highway improvement, is sufficient to and does meet the requirements of Section 5660 of the General Code in connection with types of such proposed highway.

4. A final resolution appropriating an amount of money sufficient to cover that part of the cost and expense of a proposed highway improvement in the first instance to be assumed by the county, and which final resolution also contains an agreement on the part of the county commissioners to assume in the first instance the share of the cost and expense over and above the amount to be paid by the State, which amount is sufficient to cover the most expensive type of a proposed highway improvement, and such final resolution is sufficient to and does meet the requirement of Section 1218 of the General Code in connection with types of such highway improvement of a lesser cost.

Op. Atty. Gen. (1924), p. 271.

SEC. 1218-1. (No change since 1922 edition.)

SEC. 1219. (No change since 1922 edition.)

When proceeding under section 1212 G. C., and related sections, in the matter of requisitions for the payment to contractors of estimates due them for work on state aid highway improvements, the Director of Highways and Public Works is not required to divide the requisitions for each estimate between county and state in the proportion that each is bearing a share of the cost, but may, in his discretion, draw upon either county or state for the whole of an estimate until an aggregate of ninety per cent of the share of the county or state is exhausted. The same rule applies to requisitions in payment of superintendence and inspection (section 1219 G. C.) save that the ninety per cent limitation is not applicable.

Op. Atty. Gen. (1922), p. 971.

SEC. 1220. (No change since 1922 edition.)

SEC. 1221. (No change since 1922 edition.)

SEC. 1222. **[Tax levy not exceeding one and one-half mills for providing county's proportion; stipulations.]** For the purpose of providing a fund for the payment of the county's proportion of the cost and expense of the construction, improvement, maintenance and repair of highways and of bridges in municipalities under the provisions of this chapter, the county commissioners are hereby authorized to levy a tax, not exceeding one and one-half mills, upon all the taxable property of

the county. Said levy shall be in addition to all other levies authorized by law for county purposes, but subject, however, to the extent of one-half mill thereof, to the limitation upon the combined maximum rate for all taxes now in force. The remaining one mill of said levy so authorized shall be in addition to all other levies made for any purpose or purposes, and the same shall not be construed as limited, restricted or decreased in amount or otherwise by any existing law or laws. The proceeds of such levy shall be used solely for the purpose of paying the county's proportion of the cost and expense of constructing, improving, maintaining and repairing inter-county highways and main market roads or parts thereof in co-operation with the state highway department or the federal government or both; and the funds produced by such levy shall not be subject to transfer to any other fund, either by order of court or otherwise.

The county commissioners of any county in which less than one and one-half mills is levied in any year under the provisions of this section shall within the above limitations determine what part of such levy shall be subject to the limitations upon the combined maximum rate for all taxes now in force and what part of such levy shall be outside such limitation and unrestricted by any existing law or laws.

For the purpose of providing a fund for the payment of the proportion of the cost and expense to be paid by the interested township or townships for the construction, improvement, maintenance or repair of highways under the provisions of this chapter, the county commissioners or the township trustees are authorized to levy a tax not exceeding two mills upon all taxable property of the township in which such road improvement or some part thereof is situated. Such levy shall be in addition to all other levies authorized by law for township purposes and shall be outside the limitation of two mills for general township purposes, and subject only to the limitation upon the combined maximum rate for all taxes now in force. Where the improvement is made upon the application of the county commissioners said county commissioners shall levy the tax and where the improvement is made upon the application of the township trustees said township trustees shall levy the tax. A county or township may use any moneys lawfully transferred from any fund in place of the taxes provided for under the provisions of this section.

HISTORY: — 106 v. 640; 107 v. 132; 108 v. Pt. I, 494; 109 v. 161; 110 v. 453.

1. A board of township trustees may not, except when bonds are issued under section 1223 G. C. bind the township by a levy under section 1222 G. C. for any longer period than one taxing year.

2. Funds accruing from a levy made by township trustees under section 1222 G. C. may not be used when the township trustees themselves propose to do a part of the work of improving an inter-county highway or main market road by

original construction, leaving the remainder of the improvement to be done by state, or by the state and county in co-operation.

Op. Atty. Gen. (1922), p. 522.

Section 1222 of the General Code, as amended by an act passed February 28, 1923, (110 Ohio Laws, p. 453) and which became effective June 17, 1923, should be read in connection with Section 26 of the General Code and has no application to an inter-county highway improvement project pending prior to June 17, 1923.

Op. Atty. Gen. (1924), p. 379.

Tax levies under section 1222, General Code, are not placed outside of all limitations by the issuance of bonds under section 1223 and the subsequent exemption of sinking fund levies by the voters.

Op. Atty. Gen. (1924), p. 534.

NOTE: — This section has been amended in 110 v. 453.

SEC. 1223. (No change since 1922 edition.)

SEC. 1224. **[Powers and duties of director of highways as to maintenance and repair of main market and inter-county highways; contributions.]** The director of highways and public works shall maintain and repair to the required standard, and when in his judgment necessary, shall resurface, reconstruct or widen all inter-county highways, main market roads and bridges and culverts constructed by the state, by the aid of state money or taken over by the state after being constructed. In repairing inter-county highways and main market roads the director shall not be limited to the use of the material with which such inter-county highways or main market roads were originally constructed, but may repair such inter-county highways or main market roads by the use of any material which he deem proper. When in the repair of an inter-county highway or main market road the director changes the type of such road and uses, as the principal material in making such repair, a material different from that which the road was orginally constructed, not more than ten per cent of the cost and expense of such repair may be assessed against the property abutting on said road, or within one-half mile on either side thereof or within one mile on either side thereof, in the manner hereinbefore provided in the cause of the construction of a road under the supervision of the department of highways and public works. Nothing in this chapter shall be construed so as to prohibit a county, township or municipality or the federal government or any individual or corporation from contributing a portion of the cost of the construction, maintenance and repair of said state highways. When a bridge or a culvert on a state highway shall require renewing, it shall be constructed and the cost apportioned as herein provided for the construction and improvement of bridges and culverts on inter-county highways. The director may enter into a contract with any individual, firm or corporation which gives sufficient bond for the faithful performance of said contract, or which the county commissioners of any county or the township trustees of any township in which such high-

way is situated for the repair and maintenance of such highway, or any part thereof, according to the plans and specifications provided by the director, or for the furnishing of the material and labor for such repair and maintenance, or the director may furnish the material or labor or both and supervise the repair and maintenance. Inter-county highways and main market roads on which no state aid money has been expended, if improved with construction equal to that specified by the director, shall be taken over by the state and shall thenceforth be maintained as prescribed herein for inter-county highways and main market roads. Upon the application of the county commissioners or township trustees the state highway engineer shall, within sixty days, specify what changes are required in any portion of any existing inter-county highway or main market road to bring it up to the standard required by the state, and on application, the state highway engineer shall furnish specifications for the construction of such road up to the standard required by the state. The director may also be authorized to maintain, repair, resurface or reconstruct any inter-county highway or main market road not originally constructed by the state by the aid of state money or taken over by the state after being constructed. Any such inter-county highway or main market road so maintained, repaired, resurfaced or reconstructed shall not by reason of such operation become a state road unless the work done thereon is of such a character as in the judgment of the director produces an improvement which fully meets the standard prescribed by the state for state roads.

In maintaining, repairing, resurfacing, reconstructing or widening inter-county highways or main market roads, the director of highways and public works shall proceed by contract to let to the lowest and best bidder, after advertisement as provided in section 1206 of the General Code. The director may, however, proceed by employing labor, purchasing materials and furnishing equipment, where the total expenditure per mile of road does not exceed three thousand dollars.

HISTORY: — 106 v. 641; 107 v. 133; 108 v. Pt. I, 495; 110 v. 361; 111 v. 102.

See Opinions of Attorney General (1925) No. 2839, cited under Section 6926.
See Opinions of Attorney General (1922), p. 63, cited under Section 1191.
See 105 O. S. 528, cited under Section 1206.

SEC. 1224-1. (No change since 1922 edition.)

SEC. 1224-2. **[Maintenance and repair of continuation of inter-county highway or main market road within village limits, vested in such municipal corporation.]** The director of highways and public works shall not be required to maintain or repair any continuation of an inter-county highway or main market road within the limits of any village, whether constructed by the state by the aid of state money or otherwise. The duty of maintaining and repairing all continuations of inter-

county highways and main market roads within municipal corporaton shall vest in such municipal corporations. Upon the application of the proper board of county commissioners or township trustees, and with the consent of the council of any village the director of highways and public works shall be authorized, however, if he deems it for the best interest of the public, to cooperate with such commissioners or trustees in the maintenance or repair of any such continuation of such road or highway within such village, and to pay from state funds such portion of the cost of such work as may be agreed upon between him and such commissioners or trustees. He may also, if he deems it for the best interest of the public, and upon obtaining the consent of the council of any village, maintain or repair any continuation of such road or highway within such village, and pay the entire expense of such work from state funds.

HISTORY: — 111 v. 280.

NOTE: — This section bears the same number as Section 1224-2, enacted in 109 v. 170 and found on p. 502 of the Ohio Road Laws (1922).

SEC. 1225. (No change since 1922 edition.)
SEC. 1226. (No change since 1922 edition.)
SEC. 1227. (No change since 1922 edition.)
SEC. 1228. (No change since 1922 edition.)
SEC. 1228-1. (No change since 1922 edition.)
SEC. 1229. (No change since 1922 edition.)
SEC. 1230. (Repealed 110 v. 41.)
SEC. 1230-1. (No change since 1922 edition.)
SEC. 1230-2. (No change since 1922 edition.)
SEC. 1231. (No change since 1922 edition.)

Intercounty highway funds allotted to a county are available and may be used by the Department of Highways and Public Works in the construction by the state of main market roads in such county by force account, under Section 1231 of the General Code of Ohio.

Op. Attorney General (1923), p. 686.

See Opinions of Attorney General (1922), p. 63 cited under Section 1191.

SEC. 1231-1 to 1231-7. (No change since 1922 edition.)

SEC. 1231-2. Has no meaning since the repeal of Section 1230.

SEC. 1231-8. **[Director of highways and public works shall repair damaged roads; expenses.]** It shall be the duty of the director of highways and public works to repair all substantial damage done to county and township roads, and resulting from the transportation of materials or equipment over such roads for use in constructing or repairing any main market or inter-county highway under his supervision. Such repairs shall be made immediately upon the completion of the work on such main market road or inter-county highways, or as soon there-

after as weather conditions permit. The cost of such repair to county and township roads may be regarded as a part of the cost of constructing or repairing the main market road or inter-county highway where, in the judgment of the director, the expense of making the repairs thereto may with reasonable accuracy be estimated in advance, and in such event the estimated cost of making the repairs shall be included in the estimates covering the work on the main market road or inter-county highway. Where the work carried on under state supervision is done by contract and the cost is less than the estimate therefor, the expense of making the repairs herein provided for may be paid from any balance left in the fund provided for the work carried forward by the state. Any additional expense in making the repairs herein provided for, over and above that available from the sources hereinbefore mentioned, shall be paid from the state maintenance and repair fund.

HISTORY:—110 v. 336.

SEC. 1231-9. **[Upon completion of work engineer makes survey and reports to director.]** Immediately upon the completion of any work upon any main market road or inter-county highway carried forward under state supervision, the director of highways and public works shall cause the engineer in charge of such work to make a careful investigation of all county and township roads over which material or equipment for use on such work carried forward by the state have been transported. Such engineer shall be required to report in writing to the director, setting forth all substantial damage to such county and township roads occasioned by the use thereof in transporting materials or equipment for use on the work carried forward by the state, and upon the receipt and examination of such report, it shall be the duty of the director to cause the repairs provided for by this act to be made as promptly as weather conditions will permit. Such repairs shall be made either by contract let in the manner provided by law with respect to construction contracts, or by the purchase of materials and employment of labor by the department of highways and public works, and the expense shall be paid from the funds hereinbefore provided.

HISTORY:—110 v. 337.

SEC. 1231-10. **[Director of highways and public works may designate unloading point.]** The director of highways and public works may in the preparation of plans for any highway improvement include therein, if he deems such action proper, a designation of the unloading point or points for materials to be used in such improvement, and he may also, if he deems it proper, include in the plans a designation of the route or routes over which materials for use in such improvement shall be transported. Any designation of unloading points or routes for the transportation of materials so made shall be clearly and conspicuously shown upon

the plans for such improvement, and any person awarded the contract for constructing such improvement shall, in such event, be required to unload all materials at the point or points designated on the plans and transport the same over the route or routes thereon designated. A county surveyor preparing plans for a county road improvement may, if he deems it proper, make similar designations upon such plans of unloading points and routes for the transportation of materials, and any such designations made by him and clearly shown upon the plans shall be binding upon the person awarded the contract for constructing such improvement.

HISTORY: — 110 v. 338.

SEC. 1231-11. (Repealed 109 v. 171.)

CHAPTER II

Federal Aid

An Act making appropriations for the Post Office Department for the fiscal year ending June 30, 1923, and for other purposes.

[Public—No. 244—67th Congress.]

[H. R. 9859.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * *

SEC. 4. That for the purpose of carrying out the provisions of the Act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved June 11, 1916, and all Acts amendatory thereof and supplementary thereto, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the following additional sums, all such sums to be expended in accordance with the provisions of such Act:

The sum of $50,000,000 for the fiscal year ending June 30, 1923.

The sum of $65,000,000 for the fiscal year ending June 30, 1924.

The sum of $75,000,000 for the fiscal year ending June 30, 1925.

The Secretary of Agriculture is hereby authorized, immediately upon the passage of this Act, to apportion the $50,000,000 herein authorized to be appropriated for the fiscal year ending June 30, 1923, among the several States as provided in section 21 of the Federal Highway Act approved November 9, 1921: *Provided,* That the Secretary of Agriculture shall act upon projects submitted to him under his apportionment of this authorization and his approval of any such project shall be deemed a contractual obligation of the Federal Government for the payment of its proportional contribution thereto.

PAR. 2. For the purpose of carying out the provisions of section 23 of the Federal Highway Act, approved November 9, 1921, there is hereby authorized to be appropriated for forest roads and trails, out of any money in the Treasury not otherwise appropriated, the following additional sums, to be available until expended, in accordance with the provisions of said section 23:

The sum of $6,500,000 for the fiscal year ending June 30, 1924.

The sum of $6,500,000 for the fiscal year ending June 30, 1925.

PAR. 3. For the purposes of this section and of the Acts hereto-

fore making appropriations to aid the States in the construction of rural post roads the term "bridges" includes railroad grade separations, whether by means of overhead or underpass crossings.

PAR. 4. The provision of section 5 of the Act entitled "An Act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1920, and for other purposes," approved February 28, 1919, fixing the limitation of $20,000 per mile which the Secretary of Agriculture may make, is hereby amended to read as follows:

"That the payments which the Secretary of Agriculture may make from sums appropriated under this Act or any Act amendatory thereof or supplementary thereto for the fiscal year ending June 30, 1923, shall not exceed $16,250 per mile exclusive of the cost of bridges of more than twenty feet of clear span; and that the payments which the Secretary of Agriculture may make from any sums appropriated under the provisions of this Act or any Act amendatory thereof or supplementary thereto, after the fiscal year ending June 30, 1923, shall not exceed $15,000 per mile exclusive of the cost of bridges of more than twenty feet of clear span: *Provided,* That the limitation of payments herein provided shall apply to the public-land States, except that the same is hereby increased in proportion to the increased percentage of Federal aid authorized by section 11 of the Act entitled 'An Act to amend the Act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes,"' approved November 9, 1921."

PAR. 5. Section 24 of the Act entitled "An Act to amend the Act entitled 'An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes,'" approved November 9, 1921, is amended to read as follows: "That in any State where the existing constitution or laws will not permit the State to provide revenues for the construction, reconstruction, or maintenance of highways, the Secretary of Agriculture shall continue to approve projects for said State until five years after November 9, 1921, if he shall find that said State has complied with the provisions of this Act in so far as its existing constitution and laws will permit."

PAR. 6. If any officer, agent, or employee of the United States, or any officer, agent, or employee of any State or Territory, or any person, association, firm, or corporation or any officer or agent of any person, association, firm, or corporation shall knowingly make any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any project submitted for approval to the Secretary of Agriculture under the provisions of the Federal High-

way Act, or shall knowingly make any false statement, false representation, or false report or claim for work or materials for the construction of any project approved by the Secretary of Agriculture under said Federal Highway Act and all amendments thereto, or shall knowingly make any false statement or false representation in any report required to be made under said Federal Highway Act or Acts supplementary thereto with the intent to defraud the United States shall, upon conviction thereof, be punished by imprisonment not to exceed five years or by a fine not to exceed $10,000, or by both fine and imprisonment within said limits.

PAR. 7. If any provision of this section, or the application thereof to any person or circumstances, shall be held invalid, the validity of the remainder of the section and the application of such provision to other persons or circumstances, shall not be affected thereby.

PAR. 8. All Acts or parts of Acts in any way inconsistent with the provisions of this section are hereby repealed.

* * * * * *

Approved, June 19, 1922.

A BILL To amend the act entitled "An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916, as amended and supplemented, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of carrying out the provisions of the act entitled "An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes." Approved July 11, 1916, and all acts amendatory thereof and supplementary thereto, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the following additional sums, to be expended according to the provisions of such act as amended:

The sum of $75,000,000 for the fiscal year ending June 30, 1926.

The sum of $75,000.00 for the fiscal year ending June 30, 1927.

Immediately upon the passage of this act, and thereafter not later than January 1 of each year, the Secretary of Agriculture is authorized to apportion among the several States, as provided in section 21 of the Federal highway act, approved November 9, 1921, the $75,000,000 herein authorized to be apportioned for the fiscal year ending June 30, 1926, and on or before January 1 next preceding the commencement of each succeeding fiscal year he shall make like apportionment of the appropriation herein authorized, or which may hereafter be authorized, for each fiscal year: *Provided,* That the Secretary of Agriculture shall act upon projects submitted to him under his apportionment of this authorization, and his approval of any such project within three years shall be deemed

a contractual obligation of the Federal Government for the payment of its proportional contribution thereto.

SEC. 2. For carrying out the provisions of section 23 of the Federal highway act approved November 9, 1921, there is hereby authorized to be appropriated for forest roads and trails, out of any money in the Treasury not otherwise appropriated, the following additional sums, to be available until expended in accordance with the provisions of said section 23:

The sum of $7,500,000 for the fiscal year ending June 30, 1926.

The sum of $7,500,000 for the fiscal year ending June 30, 1927.

* * * * * *

SEC. 4. That section 11 of the Federal highway act approved November 9, 1921, as amended and approved June 11, 1922, and June 30, 1923, be further amended by inserting after each place where the words, "unappropriated public lands" occur the words "and nontaxable Indian lands, individual and tribal".

SEC. 5. That in any state where the constitution or laws will not permit the state to provide revenues for the construction, re-construction, or maintenance of highways, the Secretary of Agriculture shall continue to approve projects for said state until three years after the passage of this act, if he shall find that said state has complied with the provisions of this act in so far as its existing constitution and laws will permit.

SEC. 6. All acts or parts of acts in any way inconsistent with the provisions of this act are hereby repealed and this act shall take effect on its passage. Approved February 12, 1925.

RULES AND REGULATIONS OF THE SECRETARY OF AGRICULTURE FOR CARRYING OUT THE FEDERAL HIGHWAY ACT (EXCEPT THE PROVISIONS THEREOF RELATIVE TO FOREST ROADS).

Regulation 1. — Definitions.

Section 1. For the purposes of these regulations, the following terms shall be construed, respectively, to mean:

Act. — The act of Congress approved July 11, 1916, entitled "An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes" (30 Stat. 355), as amended by the act of Congress approved February 28, 1919, entitled "An act making appropriations for the service of the Post Office Department for th e fiscal year ending June 30, 1920, and for other purposes" (40 Stat. 1200, 1201), and as amended by the act of Congress approved November 9, 1921, entitled "An act to amend the act entitled 'An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes', approved July 11, 1916, as amended and supplemented, and for other purposes." (Public, No. 87, 67th Cong.)

Secretary. — The Secretary of Agriculture of the United States.

Bureau of Public Roads. — The Bureau of Public Roads of the United States Department of Agriculture.

Authorized representatives of the Secretary. — The Chief of the Bureau of Public Roads and such other officials and employees thereof as he may designate from time to time.

Federal aid highway system. — The system of Federal aid highways, established by actual agreement and joint action of the States and the Secretary of Agriculture, and upon which all Federal aid funds shall be spent.

Primary highways. — The primary or interstate portion of the Federal aid highway system composed of not to exceed three-sevenths thereof.

Secondary highways. — The secondary or intercounty portion of the Federal aid highway system consisting of at least four-sevenths thereof.

Ten per cent fund. — Items for engineering, inspection, and unfore seen contingencies not exceeding 10 per cent of the total estimated cost of the construction.

Regulation 2. — Application of Regulations.

Section 1. These regulations apply to all provisions of the act, except the provisions thereof relative to forest roads and trails, unless hereafter so made applicable by order of the Secretary.

Sec. 2. These regulations shall apply as fully where the extent to which the State may engage in road construction and maintenance work, or raise State revenues therefor, is limited by its existing constitution and laws as in any other case.

Regulation 3. — Information for the Secretary.

Section 1. Before any agreement is made upon any road or roads to be constructed in a State, or as to the character and method of construction, there shall be furnished to the Secretary upon his request, by or on behalf of the State, general information as to its laws affecting roads and the authority of the State and local officials in reference to the construction and maintenance of roads; as to the State highway department, how equipped and organized; as to the existing provisions of its constitution or laws relative to State revenues for the construction, reconstruction, or maintenance of roads; as to funds that will be available to meet the State's share of the cost of the construction work to be performed and the general source of such funds; and as to provisions made, or to be made, for maintaining roads upon which Federal aid funds will be expended.

Sec. 2. Information requested by the Secretary or his authorized representatives relating to the maintenance of roads constructed under the provisions of the act shall be furnished, from time to time, by the State highway departments, on forms supplied by the Bureau of Public Roads.

Sec. 3. Data furnished by or on behalf of a State shall be supplemented by such reports of the Bureau of Public Roads as the Secretary may from time to time require.

Regulation 4. — Federal Aid Highway System Map.

Section 1. Each State highway department shall file with the Secretary of Agriculture a State map showing the proposed Federal aid highway system and indicating the primary and the secondary portions thereof, in such form and with such information as he may require.

Sec. 2. The Secretary, through his authorized representatives, will make an examination of the proposed system and will from time to time notify the State highway department of the acceptability of the parts of the system examined.

SEC. 3. When agreement has been reached between the State highway department and the Secretary as to the whole (or if the State so desires, of a material portion) of the Federal aid highway system, the State shall make formal request for the approval of the Secretary of Agriculture. This request will be accompanied by a State map showing the full proposed Federal aid highway system with the primary and secondary highways upon which formal approval is requested, in such form and with such information as may be prescribed by the Secretary or his authorized representatives.

SEC. 4. Pending the formal approval of the State highway system in whole or in part by the Secretary of Agriculture, only such projects will be approved as are on routes indicated on the proposed Federal aid highway system as submitted under section 1 and tentatively accepted by the Secretary under section 2 of this regulation: *Provided,* That the Secretary of Agriculture may approve project statements submitted by the State highway departments prior to the selection, designation, and approval of the system of Federal aid highways herein provided for if he may reasonably anticipate that the projects will become a part of such system.

REGULATION 5. — PROJECT STATEMENTS.

SECTION 1. A project statement may be submitted for the whole or any part of a continuous route or routes embraced in the Federal aid highway system selected or designated in accordance with the provisions of the act, preference being given to such projects as will expedite the completion of a system of highways interstate in character.

SEC. 2. Prior to the selection, designation, and approval of the Federal aid highway system, project statements may be submitted for any route or part of a route if the Secretary may reasonably anticipate that such route will become a part of such system. After the Federal aid highway system shall have been selected, designated, and approved no project statements shall be submitted for any route or part of a route not embraced in the system so selected, designated, and approved.

SEC. 3. A project statement shall contain such information as the Secretary may require to be submitted on a form supplied by the Bureau of Public Roads and shall be accompanied by a sketch map in sufficient detail and covering such length of road as may be necessary to determine the fitness of the location as a part of the Federal aid highway system and with the termini of the proposed improvement indicated thereon.

REGULATION 6. — SURVEYS, PLANS, SPECIFICATIONS, AND ESTIMATES.

SECTION 1. The surveys, plans, specifications and estimates shall show in convenient form and detail the work to be performed, and the

probable cost thereof, all in conformity with the standards, governing form, and arrangement prescribed by the Secretary.

SEC. 2. Copies of the specifications shall be submitted with the plans and estimates, except that where standard specifications have been approved by the Chief of the Bureau of Public Roads a statement to the effect that approved standard specifications govern may be submitted in lieu of the printed documents.

SEC. 3. Until plans, specifications, and estimates for a project or part thereof have been submitted and found satisfactory for recommendation, and the State has been so notified by the district engineer of the Bureau of Public Roads, no project or part thereof shall be let to contract.

SEC. 4. The estimate for each project shall show the estimated quantity and the estimated cost of each item of construction in detail and, separately, the 10 per cent fund, and shall not include any expense for advertising.

SEC. 5. Unless State standard contract and bond forms have been approved there shall be submitted with each set of plans for the approval of the Secretary copies of the form of contract together with all documents referred to therein or made a part thereof, and of the contractor's bond which it is proposed to use on the project. No alteration of either of these forms, when once approved, shall be made until it is approved by the Secretary.

SEC. 6. Where any part of the cost of a project is to be furnished by a county or other local subdivision or subdivision of a State, the plans, specifications, and estimates shall be accompanied by certified copy of each resolution or order, if any, of the appropriate local officials, or such other showing as the Secretary may require respecting the funds which are made available, or respecting the supervision of the construction of the road and of the control of the money provided for paying such cost.

SEC. 7. Right of way ample for any project shall be provided and no incidental damages to adjoining property, due to construction work paid for by or on behalf of the State, shall be included in the estimate or be paid in any part, directly or indirectly, by the Federal Government.

SEC. 8. Grade crossings occurring on the Federal aid highway system shall be classified for priority of improvement by agreement between the State highway departments and the Bureau of Public Roads.

SEC. 9. No part of the expense of making surveys, plans, specifications, or estimates, by or on behalf of the State prior to the beginning of construction work, shall be included in the estimate or paid by the Federal Government.

SEC. 10. Subsequent to the execution of the agreement no change which will increase the cost of a project to the Federal Government shall be made, except upon approval by the Secretary of Agriculture, and no changes shall be made in the termini or type, except upon approval of

the Chief of the Bureau of Public Roads, but minor alterations which do not affect the general nature of the improvement or increase the total cost to the Federal Government may be authorized by the Chief of the Bureau of Public Roads or his authorized representative.

Regulation 7. — Project Agreements.

Section 1 A project agreement between the State highway department and the Secretary shall be executed in triplicate on a form furnished by the Secretary. No payment shall be made by the United States unless or until such agreement has been executed, nor on account of work done prior to recommendation by the district engineer of the Bureau of Public Roads that the plans, specifications, and estimates be approved.

Regulation 8. — Contracts.

Section 1. No part of the Federal money set aside on account of any project shall be paid until it has been shown to the satisfaction of the Secretary that adequate methods, either advertising or other devices appropriate for the purpose, were employed, prior to the beginning of construction, to insure economy and efficiency in the expenditure of such money.

Sec. 2. Upon publication of advertisements copies thereof shall be furnished to the Bureau of Public Roads.

Sec. 3. Bids shall conform to the standard proposal form, and the items shall be the same as those contained in the estimate provided for in Regulation 6, section 4.

Sec. 4. Copy of the tabulated bid prices, showing the unit prices and the totals of each bid for every project, shall be furnished promptly to the Bureau of Public Roads.

Sec. 5. In advance of the acceptance of any bid sufficient notice of the time and place the contract is to be awarded shall be given to the Bureau of Public Roads to enable it, if it so desires, to have a representative present. When a bid has been accepted prompt notice thereof shall be given to the Bureau of Public Roads.

Sec. 6. If the contract be awarded to any other than the lowest responsible bidder the Federal Government shall not pay more than its pro rata share of the lowest responsible bid, unless it be satisfactorily shown that it was advantageous to the work to accept the higher bid.

Sec. 7. The specifications and plans shall be made a part of the contract.

Sec 8. A copy of each contract, as executed, shall be promptly certified by the State highway department and furnished to the Secretary and no alteration in the contract shall be subsequently made without the approval of the Secretary.

Regulation 9. — Construction.

Sec. 1. Suitable samples of materials to be used in construction work shall be submitted, by or on behalf of the State highway department, to the Bureau of Public Roads whenever requested.

Sec. 2. Unless otherwise stipulated in writing by the Secretary or his authorized representative, materials for the construction of any project shall be tested, prior to use, for conformity with specifications, according to methods prescribed or approved by the Bureau of Public Roads.

Sec. 3. No part of the money apportioned under the act shall be used, directly or indirectly, to pay or to reimburse a State, county, or local subdivision for the payment of any premium or royalty on any patented or proprietary material, specification, process, or type of construction unless purchased or obtained on open actual competitive bidding at the same or a less cost than unpatented articles or methods, if any, equally suitable for the same purpose.

Sec. 4. The supervision of each project by the State highway department shall include adequate and continuous engineering inspection throughout the course of construction.

Sec. 5. Written notice of commencement and completion of work on any project shall be given promptly by the State highway department to the Bureau of Public Roads.

Sec. 6. Reports of the progress of construction, showing force employed and work done, shall be furnished as requested by the Secretary or his authorized representatives.

Regulation 10. — Records and Cost Keeping.

Section 1. Such records of the cost of construction, of inspection, of tests, and of maintenance, done by or on behalf of the State, shall be kept, by or under the direction of the State highway department, as will enable the State to report, upon the request of the Secretary or his authorized representatives, the amount and nature of the expenditure for these purposes.

Sec. 2. The accounts and records, together with all supporting documents, shall be open at all times to the inspection of the Secretary or his authorized representatives, and copies thereof shall be furnished when requested.

Regulation 11. — Payments.

Section 1. Vouchers, in the form provided by the Secretary and certified as therein prescribed, showing amounts expended on any project and the amount claimed to be due from the Federal Government on account thereof, shall be submitted by the State highway department to

the Bureau of Public Roads, either after completion of construction of the project, or, if the Secretary has determined to make payments as the construction progresses, at intervals of not less than one month.

Regulation 12. — Submission of Documents.

Section 1. Papers and documents required by the act or these regulations to be submitted to the Secretary may be delivered to the Chief of the Bureau of Public Roads or his authorized representatives and, from the date of such delivery, shall be deemed submitted.

CHAPTER III

County Commissioners

SEC. 2400. **[Organization; election of President.]** The board of county commissioners shall organize on the first Monday of January of each year, by the election of one of its members as president for a term of one year. The member so elected shall preside at all regular and special sessions thereof. If the position of president becomes vacant during the year, the board shall select one of its members to preside.

HISTORY: -- R. S. §848; 89 v. 220; 92 v. 10; 111 v. 18.

SEC. 2401 to 2408. (No change since 1922 edition.)

SEC. 2408. (No change since 1922 edition.)

1. Where a railroad company, prior to the enactment of the grade crossing elimination statutes (Secs. 8863 et seq.) has erected bridges along a public road so as to constitute an overhead crossing for the public road it is the duty of the railroad company and not of the county to keep up all repairs of such bridges.

2. But by reason of Section 2408 G. C., the county, in order to afford a safe way for the public, may and should make repairs if the railroad fails to do so, and charge the cost to the railroad company.

3. Further, an action in mandatory injunction may perhaps be available to the county commissioners to compel the railroad company to make the necessary repairs.

Op. Atty. (1922), p. 1020.

A board of county commissioners is not liable in its official capacity for damages for negligent discharge of its official duties except in so far as such liability is created by statute, and such liability shall not be extended beyond the clear import of the terms of the statutes.

Where in the course of the repair of a state road by the state highway department a barrier is constructed at one terminus of such improvement, a board of county commissioners is not liable for damages caused to the occupants of an automobile which without notice or warning of the existence of such barrier was driven violently against such barrier.

State highways are under the exclusive power and control of the state highway department and no duty is enjoined upon county commissioners to maintain and repair the same, and therefore a board of county cmmmissioners is not chargeable with negligence or carelessness by reason of such state highways not being kept in proper repair.

Weiher, etc., v. Phillips — 103 O. S. 249.

SEC. 2412-1. **[Commissioners authorized to purchase motor vehicles.]** That, whenever the board of county commissioners, deems it necessary to purchase a motor vehicle or vehicles for the use of the sheriff or sanitary engineer, their deputies or necessary employes they

shall adopt a resolution setting forth the necessity for such purchase, together with a statement of the kind and number of vehicles required and the estimated cost of each such vehicle.

Upon the adoption of said resolution the board of county commissioners may purchase said vehicles for the use and purposes of the aforesaid persons or any of them. If the board of county commissioners deem it necessary to purchase a motor vehicle or vehicles for their use or for the use of any department under their direct control, application shall be made by them to a judge of the court of common pleas of said county, who, if upon the hearing thereof finds it necessary and expedient to purchase such vehicle or vehicles shall so order, fixing the number and kind of such vehicles, and the amount to be expended for each.

HISTORY: — 107 v. 585; 111 v. 365.

By Amended Senate Bill No. 44, county commissioners may purchase motor vehicles, without the approval of the common pleas court, for the sheriff and sanitary engineer or their employes, to be used subject to the regulation of such officials.

Under this act, county commissioners may purchase motor vehicles, with the approval of the common pleas court, for their own use or for the use of any department under their direct control. When purchased, such vehicles shall be for the use of the county commissioners or other county officials, such use to be subject to the regulation of the county commissioners.

Op. Atty. Gen., Sept. 12, 1925.

SEC. 2412-2. **[Use of vehicle s regulated by commissioners.]** When purchased, such vehicle or vehicles shall be for the use of the county commissioners, or other county officials, such use to be subject to the regulation of the county commissioners. Such vehicles shall be used by each such officials or said deputies and employes in lieu of hiring vehicles, in the manner otherwise provided by law unless the county vehicles are not available for such use. When vehicles are so purchased, the county commissioners may purchase such supplies as may be necessary. Any vehicles heretofore acquired and now owned by the county shall be used as herein provided. All such vehicles shall be plainly and conspicuously lettered as the property of the county. No official or employe shall use or permit the use of any such vehicle or any supplies therefor, except in the transaction of public business or work of such county.

HISTORY: — 107 v. 586; 111 v. 365.

SEC. 2421. (No change since 1922 edition.)

See Opinions of Attorney General (1925) No. 2634, cited under Section 7557.

Section 2421, General Code, does not authorize the board of County Commissioners to build bridges other than on established roads. Such board is without power to connect two state or county roads by a bridge, without first laying out and acquiring a road connecting such state or county roads. But where such board

has been authorized by a vote of the electors under Section 5638, General Code, to expend in excess of $18,000 in the construction of a bridge on a given site connecting two state or county roads, it may thereafter lay out and acquire a road on such site, and then construct the bridge within the limitations of the authorization.

State, ex rel. v. Commissioners — 107 O. S. 465.

SEC. 2432-1. (No change since 1922 edition.)

Sections 2432-1 et seq. G. C. (109 O. L. 348), authorizing the construction by county commissioners of bridges within a conservancy district to replace those bridges which were removed in the carrying out of the conservancy project, are to be read as independent of the provisions of previously existing section 2421 G. C. Accordingly, county commissioners in proceeding under sections 2432-1 et seq. G. C. are not in the construction of bridges, limited to city streets forming part of a state or county road, but may replace bridges which were removed from city streets not constituting part of a state or county road.

Op. Atty. Gen. (1922), p. 515.

SEC. 2434. (No change since 1922 edition.)

Sections 2333 and 5638, General Code, are sections of general limitation on the power of county commissioners to levy a tax, appropriate money, or issue bonds, for the purpose of building county buildings, and are subject to a strict construction for the purpose of confining their operation within the limitations expressed.

A statute in order to be held an exception to the general provisions of another conferring power and limitation of power on an administrative board, must be couched in language so clear and unambiguous as to be free from doubt as to the intent of the legislature in declaring it to be an exception.

The language employed by the legislature in Section 2434, General Code, authorizing county commissioners to borrow money for the erection of a county jail, may not be construed as an exception to the limitation on its powers provided in Sections 2333 and 5638, General Code, but must be construed in pari materia with those sections.

When the voters of a county sanction the policy of building a county jail by voting a bond issue in an amount certain, the policy adopted is one involving the expenditure of no greater sum than that approved, and a building commission is without power to contract for such building under its adopted policy and plan involving an estimated expenditure of an amount in excess of that sanctioned by the voters.

State, ex rel., v. Andrews, 105 O. S. 489.

CHAPTER IV

Road Construction and Improvement by County Commissioners.

SEC. 6860. (No change since 1922 edition.)

A contract for the sale of real property does not render its possessor a freeholder or render him competent to sign an application to county commissioners for the vacation of a public road.

The authority conferred on county commissioners by Section 6860 to vacate a public road upon application of at least twelve freeholders of the county resident in the vicinity of the proposed improvement does not include authority to vacate an alley.

A term used in a statute and not therein given special definition should be construed in accordance with the common law meaning.

Morrow et al v. Wittlet et al. 25 N. P. (N. S.) 85. Decided, 1924.

SEC. 6861 to 6886-12. (No change since 1922 edition.)

SEC. 6887. **[Petition to obtain road through lands of another.]** Any person, firm or corporation desiring to secure for the use of the public a road leading from any land owned by said person, firm or corporation, through the lands of another person or persons, to a public highway, may file a petition with the county commissioners describing the road so desired, and giving the respective names and places of residence of the owner or owners of all the land through which the proposed road will pass.

HISTORY: — 106 v. 582; 110 v. 55.

SEC. 6888. **[Notice of filing petition; proof of service; publication.]** The county commissioners shall give notice to such owner or owners of the filing of such petition and the date and place of hearing thereon. Such notice shall be served on such owner or owners personally, or by leaving a copy of the same at the usual place of residence of such owner at least five days before the date of hearing on said petition. Proof of service of such notice shall be made by affidavit of the person serving such notice. If any of the owners of lands through which the proposed road will pass, are non-residents of the county, the commissioners shall cause a notice to be given to such non-residents by publication once each week for two consecutive weeks in a newspaper published and having general circulation within the county, if there be any such paper published in said county, but if there be no such paper published in said county then in a newspaper having general circulation in said county. A copy of the newspaper containing such notice shall be mailed by the

auditor of the county to each non-resident land owner whose post office address is known to such auditor. Such notice shall state the time and place of hearing on claims for compensation and damages.

HISTORY: — 106 v. 582; 110 v. 55.

SEC. 6889. **[Application for compensation and damages; award; appeal.]** Application for compensation and damages shall be made in writing at any time before the date for hearing thereon. Any failure to make such application shall be a waiver of all rights thereto by every person interested therein, except minors, or other persons under disability. If the commissioners find said road petitioned for will serve the public convenience or welfare, they shall establish such road; or they may establish a road for the use of the public, with such changes or alterations in the route or course thereof as they may deem necessary for the protection of the rights of other owners, and shall award to each person making such application the amount of compensation and damages which they deem to be just and adequate. Said commissioners shall at the same time award to any minor or other person under disability owning lands through which said road passes, the amount which in their judgment is due such person for compensation or damages, notwithstanding no application has been made therefor on behalf of such minor or other person under disability. When the petitioner for said road has paid to the owner or owners of lands through which said road will pass, the amount found due them for compensation or damages by the county commissioners, or by a jury in the event of an appeal, he shall have full right and authority to enter upon said premises and open up said road. Any petitioner may appeal from the order of the board of commissioners refusing to establish such road. Any person interested may appeal from an order establishing such road. If any owner of premises through which said road passes is not satisfied with the amount awarded him by the county commissioners as compensation and damages, or either, he may appeal from such award. All the appeals provided for in this section shall be to the probate court and shall be taken and perfected in the manner provided for in the chapter relating to appeals in road cases. Proceedings under this and the preceding sections shall be subject to the provisions of section 6890 of the General Code.

HISTORY: — 106 v. 583; 107 v. 73; 110 v. 56.

SEC. 6890. (No change since 1922 edition.)

SEC. 6891. (No change since 1922 edition.)

Under Section 6891, General Code, an appeal lies from the final order of the county commissioners vacating a county road or any part thereof.

Any freeholder of the county residing in the vicinity of the improvement is a party interested in the granting or refusing of such improvement, and may appeal therefrom.

Commissioners v. Gibson. 110 O. S. 290.

SEC. 6891-1 to 6904. (No change since 1922 edition.)
SEC. 6906. (No change since 1922 edition.)

The fact that a county commissioner owns real estate within the assessable area of an improvement to be taxed by a special assessment for the construction of a road does not of itself disqualify him to act as a county commissioner in proceedings relative to laying out and making a road under Section 6909 et seq., General Code.

Hamilton v. Commissioners — 108 O. S. 566.

1. The cost and expenses of constructing the necessary bridges in a proceeding to improve a county road under the provisions of Section 6906, and related sections, of the General Code, may not be apportioned between the county, interested, township or townships, and land owner, according to the provisions of Section 6919 of the General Code. The entire cost and expenses of the construction of such bridges must be paid by the county.

2. The cost and expenses of constructing the necessary culverts in a proceeding to improve a county road under the provisions of Section 6906, and related sections, of the General Code, may be apportioned between the county, interested township or townships, and land owners, according to the provisions of Section 6919 of the General Code.

Op. Atty. Gen. No. 2501, May 16, 1925.

SEC. 6907. (No change since 1922 edition.)

1. Where an abandoned cemetery is in the line of a proposed road improvement, under section 6907 and related sections, of the General Code, and such cemetery is necessary as a part of the right of way of such road, the removal of all bodies buried in such cemetery, and all monuments marking the graves thereof, should be provided for by the township trustees under the provisions of section 3465 of the General Code.

2. The cost and expense of providing for such removal should, in the first instance, be borne by the township trustees.

3. The cost and expense of providing for such removal having, in the first instance, been borne by the township trustees, such cost and expense should be treated as a part of the compensation, damages, costs and expenses of the improvement, and, under section 6919 of the General Code, be apportioned and assessed as therein, and in related section, provided.

4. The township trustees should be reimbursed for such expenditure from the funds of the improvement.

Op. Atty. Gen. (1923), p. 276.

SEC. 6908 (No change since 1922 edition.)
SEC. 6909. (No change since 1922 edition.)
SEC. 6910. (No change since 1922 edition.)

Where a county road improvement project is initiated by county commissioners by the passage of the preliminary resolution of necessity by the unanimous vote required by sections 6910 and 6911 G. C., in case no petition is filed, the further resolutions contemplated by sections 6917, 6922, 6926 and 6929 G. C., are not required to be adopted by unanimous vote.

Op. Atty. Gen. (1922), p. 834.

The repair, at the cost of the abutting owners, of a public highway subject to heavy traffic, requiring frequent resurfacing to keep it in condition for travel, may prove to be inequitable in many cases, especially if the cost of repair should be heavy and frequent; but this is a question of policy which the legislature has left to the board of county commissioners for its exercise. This court cannot control the discretion of the county commissioners in choosing the method by which these assessments will be made. Section 6910, General Code, provides that the county commissioners may take the necessary steps to improve or repair a public road, or part thereof, upon the passage of a resolution by unanimous vote declaring the necessity therefor, and that the cost and expense of improvement may be paid in any one of the methods provided in Section 6919, General Code, as may be determined by the county commissioners in such resolution.

Spaulding, Treas., v. Wickham — 105 O. S. 436.

SEC. 6911 to 6916. (No change since 1922 edition.)

SEC. 6917. (No change since 1922 edition.)

See Opinions of Attorney General (1922) p. 834 cited under Sec. 6910.

SEC. 6918. (No change since 1922 edition.)

SEC. 6919. (No change since 1922 edition.)

A board of commissioners may assess any part or all the compensation, damages, costs and expenses of a road improvement against the real estate abutting upon such improvement. The only limitation upon such power is that the assessments against the real estate abutting upon the improvement shall not exceed the benefits which will result to such real estate.

Op. Atty. Gen. (1923), p. 207.

See Opinions of Attorney General (1923) p. 276 cited under Sec. 6907.

See Opinions of Attorney General (1925) No. 2501, cited under Sec. 6906.

Section 6919, General Code, provides that the cost of the improvement may be "assessed against the real estate abutting upon said improvement," as was done in this case. It is true it may also be assessed against real estate within one-half mile, or within one mile of the improvement, according to the discretion of the county commissioners; but the law as it now exists fully empowers them with discretion to select the method of assessment. To hold otherwise would be judicial legislation and nothing more.

Spaulding, Treas., v. Wickham — 105 O. S. 437.

SEC. 6920. (No change since 1922 edition.)

SEC. 6921. (No change since 1922 edition.)

SEC. 6921-1. (No change since 1922 edition.)

SEC. 6922. (No change since 1922 edition.)

Where a county road improvement project is initiated by county commissioners by the passage of the preliminary resolution of necessity by the unanimous vote required by sections 6910 and 6911 G. C., in case no petition is filed, the further resolutions contemplated by sections 6917, 6922, 6926 and 6929 G. C. are not required to be adopted by unanimous vote.

Op. Atty. Gen. (1922) p. 834.

SEC. 6923 to 6925. (No change since 1922 edition.)
SEC. 6926. (No change since 1922 edition.)

Any unappropriated funds from the two mill road levy may be used to certify that the money is on hand for the purpose of letting a contract for the construction of an inter-county highway or main market road.

The county commissioners may not increase the cost and expense of an improvement under section 1214 to more than the amount assigned by law, unless the township trustees should agree to such increase.

Op. Atty. Gen. No. 2839, Oct. 6, 1925.

SEC. 6926-1 to 6944-1. (No change since 1922 edition.)
SEC. 6945. (No change since 1922 edition.)

Where a proposal form used by a county in taking bids for a road improvement (Secs. 6945 and 6948 G. C.) makes provision for both unit prices and a lump sum price, and states that comparison of bids will be made on the basis of estimated quantities and that the right is reserved to the county to increase or diminish quantities or omit items, the county commissioners may in their discretion award the contract to one who submits the lowest lump sum offer, notwithstanding that he has omitted to specify a unit price on one small item named in the specifications.

Op. Atty. Gen. (1922), p. 491.

SEC. 6945-1 to 6947-2. (No change since 1922 edition.)
SEC. 6948. (No change since 1922 edition.)

1. Under Section 6948 of the General Code, county commissioners may not divide nor split up extra work arising from an unforeseen contingency, in connection with a road improvement project, and thereby evade the statutes requiring that such contracts be let by competitive bidding.

2. Under Section 6948 of the General Code, if it be necessary, due to an unforeseen contingency, to enter into an extra work contract in connection with a road improvement project, and the estimated cost of such extra work is such an amount that competitive bidding might, under the statute, be dispensed with, and such extra work has been let by private contract, and thereafter, acting in good faith, the county commissioners discover that through some unforeseen contingency it is necessary to provide additional extra work in connection with such improvement project, and the estimated cost of such extra work is such an amount that competitive bidding might, under the statute, be dispensed with, the county commissioners would be authorized to let such extra work by private contract.

Op. Atty. Gen. (1924), p. 130.

1. The original contract price, in connection with contracts let on the basis of unit price bids, mentioned in Section 6948 of the General Code, is to be determined from the unit price bids based upon the estimated quantities of the various items going into the project.

2. The provision of Section 6948 of the General Code, providing that no contract shall be awarded for extra work at any price in excess of the original contract unit price, for the same class or kind of work, applies only to extra work in connection with projects which may, under the provisions of said section, be let by private contract.

Op. Atty. Gen. (1924), p. 232.

See Opinions of Attorney General (1925), No. 2800 cited under Section 5654-1.

SEC. 6948-1. **[Construction by force account, when.]** If the county commissioners deem it for the best interest of the public they may, in lieu of constructing such improvement by contract, proceed to construct the same by force account. Where the total estimated cost of the improvement exceeds three thousand dollars per mile, the commissioners shall be required to invite and receive competitive bids for the work, before ordering the same done by force account. The provisions of this section shall apply both to new construction and to repair work.

History: 107 v. 107; 111 v. 103.

See Opinions of Attorney General (1925), No. 2800, cited under Section 5654-1.

SEC. 6948-1a. **[Construction of inter-county highways; when cost less than $3000 per mile.]** The director of highways and public works, subject to the provisions of law governing the state highway department, shall have power to purchase such equipment and materials and employ such labor as may be deemed necessary to execute any work in the construction of inter-county highways in the manner provided in section 1231 of the General Code, provided the estimated cost of such work does not exceed three thousand dollars per mile.

In the construction of main market roads under the provisions of said section 1231 of the General Code, the director of highways and public works shall be required to proceed by contract when the estimate exceeds three thousand dollars per mile.

HISTORY: — 111 v. 103.

SEC. 6948-2. (No change since 1922 edition.)
SEC. 6949. (No change since 1922 edition.)

A village ordinance consenting that a board of county commissioners might construct a highway improvement through such village (Section 6949 G. C.) is not effective as giving the consent provided for by Section 1192-1 G. C. relating to improvements to be carried out by the Department of Highways and Public Works on the state aid plan.

Op. Atty. Gen. (1922), p. 872.

SEC. 6950 to 6953. (No change since 1922 edition.)
SEC. 6954. (No change since 1922 edition.)

Under Section 6954 G. C., county commissioners, with the consent of the municipal council, may resort to the county road repair fund and make repairs upon a municipal street directly connected with a county road by another municipal street running at right angles from the street proposed to be repaired. This is true even though there are other indirect routes connecting said county road with the street proposed to be repaired, and even though the latter street also constitutes a continuation of a state road entering and leaving the municipality at points other than said county road enters it.

Op. Atty. Gen. (1922), p. 713.

SEC. 6955 to 6956-1a. (No change since 1922 edition.)

SEC. 6956-2. Repealed 110 v. 241.

SEC. 6956-3. Repealed 110 v. 241.

SEC. 6956-4. (No change since 1922 edition.)

SEC. 6956-16. (No change since 1922 edition.)

SEC. 6957 to 6964. (No change since 1922 edition.)

SEC. 6964-1. **[When county commissioners shall make repairs; payment for.]** It shall be the duty of boards of county commissioners to repair all substantial damage caused to county or township roads by the transportation of materials or equipment over such roads for use in constructing or repairing any road by such county commissioners. Such repairs shall be made immediately upon completion of the work for which such materials and equipment were transported, or as soon thereafter as weather conditions will permit. The work may be done either by contract let in the manner provided by law or by the employment of labor and purchase of materials, as in the ordinary repair of county roads. The cost of such repair shall be paid, so far as funds are available, from any balance remaining in any special fund created for the construction of the improvement for which such materials and equipment were transported. If there is no balance in such fund, payment shall be made from any fund in the county treasury created by general taxation for county road purposes and against which no conractual obligations exist. Immediately upon the completion of any road work carried forward by the county, an inspection of the county and township roads over which material and equipment for use thereon were transported shall be made by the county commissioners, or they may require the county surveyor to make such inspection and report to them in writing as to the substantial damage, if any, caused to such roads by such use thereof. It shall then be the duty of the county commissioners to cause to be made the repairs herein provided for and make payment therefor as hereinbefore provided.

HISTORY: — 110 v. 337.

SEC. 2504-1. **[Annual inventory.]** The county commissioners shall make an inventory on the second Monday in January of each year. of all the materials, machinery, tools and other county supplies in their possession. Such inventory shall be a public record and shall be made in duplicate and one copy filed with the clerk of the board of county commmissioners and one copy with the county surveyor.

HISTORY: — 111 v. 14.

CHAPTER V

County System of Highways

GREEN LAW

SEC. 6965. **[Creation of county system of highways; Report by township trustees:]** There shall be created in each county within the state a system of county highways, which system shall be selected and determined in the following manner, to-wit:

Within sixty days after the taking effect of this act, the township trustees of each township within the state shall, upon request and under the direction of the county commissioners of the county within which such township is located and upon such forms as shall be prescribed by the said county commissioners, make a report to the county commissioners setting forth the relative value of each road in the township in consecutive order as a used highway, the kind of traffic over such road, its length and present condition, together with such other information as may be desired and requested by the county commissioners. The county commissioners may request the aid and assistance of the county surveyor in preparing blank forms and reports for the use of the township trustees together with any maps which in their judgment may be needed by the trustees in making their report. It shall be the duty of all boards of county commissioners to request the report herein provided for from each board of township trustees within their county as soon after the taking effect of this act as the necessary blank forms and maps may be conveniently prepared, and it shall be the duty of all boards of township trustees to promptly make the reports herein provided for, it being the intent and purpose of this section that all of the duties herein required to be performed by county commissioners and township trustees shall be completed within sixty days after taking effect of this act.

HISTORY: — 110 v. 267.

By the Court:

This is an original action in this court in mandamus seeking to compel the auditor of state to deliver a warrant on the treasurer of state for the sum of one thousand dollars out of an appropriation to afford relief to townships by providing for the creation of a system of county highways and authorizing state aid in the construction thereof. The original legislation authorizing such improvements and state aid is found in sections 6965 to 6972, both inclusive, General Code. The specific appropriation was made as a part of the general appropriation bill of the 86th general assembly, and that specific appropriation was in the amount of $350,000 for the current year. Section 6971 provides that the state aid for each township

shall be such sum as shall be deemed just and reasonable, but in no event less than $1,000 nor more than $2,000 per township per annum.

This court will take judicial notice of the fact that there are 1412 separate and distinct townships in the state of Ohio and that if the $350,000 were to be distributed equally among all such townships it would pay only a fraction of the sum of $1,000 to each township. The general appropriation bill, referring to the said sum of $350,000, contains the following limitation:

"to be distributed in manner provided by sections 6965 to 6972, G. C. (110 O. L., 267). No township to receive in excess of $1,000 per year as state aid."

The original act having provided that in no event should the appropriation for each township per year be less than $1,000, and there being a latitude between $1,000 and $2,000, and the general appropriation bill having definitely provided that it should not be in excess of $1,000 per year, the legislative intent in the general appropriation bill must be held to be that $1,000 should be paid to each township applying. Reference having been made in the general appropriation bill to all sections of the general law, including section 6971 wherein the minimum of $1,000 is fixed, it will be presumed that in framing the general appropriation bill the legislature deemed it unnecessary to state that the minimum provided in section 6971 should not be violated. Section 6971 is certainly *in pari materia* with the general appropriation bill and when read together there can be no difficulty in arriving at the legislative intent. The demurrer to the petition will therefore be overruled and the peremptory writ awarded.

Writ allowed.

State ex rel v. Tracy 113 O. S. Decided Oct 29, 1925.

Op. Attorney General No. 2572, June 17, 1925.

SEC. 6966. **[Duties of county commissioners.]** It shall be the duty of the board of county commissioners of each county to determine from the statistics and information furnished by the several boards of township trustees within such county the relative importance and value for traffic of the various public highways of the entire county. They shall begin work as soon as the necessary information is furnished by the several boards of township trustees within the county, and after a careful review and consideration of the information furnished by such trustees shall select and designate a connected system of county highways of such mileage as they may deem proper and expedient, connecting with the intercounty highways and main market roads of such county all of the villages, hamlets, and centers of rural population within the county. Such system of highways when selected and designated by the county commissioners in the manner herein prescribed shall be known as the system of county highways of said county and all of the roads composing said system shall thereafter be known and designated as county roads. The county commissioners may call to their assistance the county surveyor in performing the duties devolving upon them under this section and may require him to report as to the relative importance of the highways of any township with respect to which the trustees thereof fail to report within a reasonable time, and upon the completion

of their investigation and the designation of the system of county highways the commissioners shall require the surveyor to make a map thereof. A copy of this map with the mileage of the selected roads indicated thereon together with a brief statement by the county commissioners of their reasons for the selection made, shall thereupon be transmitted to the director of highways and public works of the state of Ohio. If the director finds that said system has been designated in substantial compliance with the terms of this act, and that all portions of the system of county highways connect with either a main market road or an intercounty highway, or another county road, the director shall within sixty days approve such system and certify his approval to the board of county commissioners, who shall thereupon cause a copy of said map duly approved by them to be made a part of their records and shall cause a copy thereof to be filed in the office of the county surveyor and in the office of the clerk of each township within the county. The system of roads designated upon said map shall thereupon become the system of county roads of said county. Each road constituting a part of said system shall be given a number by the board of county commissioners who may also divide said roads into convenient sections and assign appropriate designations to each section. No main market road or intercounty highway or part thereof shall be included in the system of county highways hereinbefore provided for. The board of county commissioners of any county may from time to time make changes in the county system or addition thereto in the manner hereinbefore provided with respect to the creation of the same. All expenses incurred in carrying out the provisions of this and the preceding section shall be paid from the general county road fund.

HISTORY: — 110 v. 268.

SEC. 6967. **[Duties of county surveyor and township trustees. Plans; construction, etc.]** The board of township trustees of any township within a county may make application in writing to the board of county commissioners thereof for the construction, reconstruction or improvement of any section of highway in the county system. If the county commissioners approve such application they shall direct the county surveyor to make the necessary plans for the construction, reconstruction or improvement of such section of highway together with an estimate of the cost thereof. It shall be the duty of the county surveyor to promptly prepare such plans and estimates and file the same with the county commissioners. If the county commissioners approve said plans and estimates of such section of highway, the cost thereof shall be paid as follows:

The county shall pay not less than five hundred dollars per mile of said cost, such payment to be made out of the proceeds of any levy

or levies made or to be made upon the grand duplicate of said county for the purpose of paying a county's proportion of the compensation, damages, costs and expenses of construction, reconstruction and improvements of roads under the provisions of sections 6906 and 6956 of the General Code. The township in which such section of road is to be constructed shall pay not less than five hundred dollars per mile, payment to be made out of the proceeds of any levy or levies made or to be made against the tax duplicate of such township for the purpose of paying the township's proportion of the compensation, damages, costs and expenses of constructing, reconstructing and improvement of roads under the provisions of section 6906 to 6956 of the General Code.

Subject to the above limitations, the exact proportions of the cost to be paid by the county and township shall be determined by agreement between the commissioners and trustees.

Fifty per cent of the cost of any such improvement, but in no case more than two thousand dollars per mile shall be apportioned to and assessed against the owners of real estate abutting on said improvement, or the owners of real estate situated within one-half mile of either side of said improvement, or the owners of real estate situated within one mile on either side of improvement, according to the benefits accuring to such real estate, as may be determined by a majority vote of the board of county commissioners. Upon the written consent of sixty per cent in number of the owners of real estate to be specially assessed for any improvement, the county commissioners shall be authorized to increase the amount specially assessed to the extent set forth in such written consent. The county commissioners may, however, if they deem it equitable and for the best interest of the public, waive the making of the special assessment herein provided for, or any part thereof, and pay from any available funds in the county treasury, created either by taxation or from the sale of bonds, all that portion of the cost of the improvement not paid by the state and township, or such share thereof as they deem proper. The state shall pay in the manner hereinafter provided such amount as may be available from appropriations from the general revenue fund made by the general assembly, but in no event more than two thousand dollars in any one twonship during any one fiscal year. For the purpose of providing funds for the payment of the respective shares of the county, township and owners of real estate to be specially assessed. The county commissioners shall have the power to issue bonds as if the improvement were made under sections 6906 to 6956 of the General Code, except that said bond shall mature in not more than five years.

Special assessments shall be made in the manner provided by law

with respect to special assessments for the construction of county roads by boards of county commissioners and as specially provided in sections 6922, 6923 and 6925 of the General Code of Ohio. All questions of appropriation of property, claims for compensation and damages, and the award thereof, shall be determined in the manner provided by law for use in the construction of county roads by boards of county commissioners.

HISTORY: — 110 v. 269.

SEC. 6968. **[Approval of plans. Advertisement; notice; contract.]** After the approval of the plans and estimates by the county commissioners, and if said commmissioners are still satisfied that the public convenience and welfare requires the construction of the improvement, and by resolution so determine, they shall advertise for bids once not later than ten days prior to the date fixed for the letting of a contract in a newspaper published and of general circulation in said county, and shall also cause a notice of said letting to be posted in their office ten days before the date thereof. Such notice shall state that copies of the plans and estimates for such improvement are on file in the office of the county commissioners and the time within which bids will be received. They shall after the opening and tabulating of bids and the investigation thereof award the contract to the lowest responsible bidder. The same shall be let upon the basis of lump sum bids unless the commissioners order that the same shall be let upon the basis of unit price bids, in which case it shall be let upon such basis. No contract shall be awarded at a greater sum than the estimated cost thereof. The county commissioners shall have the right to reject all bids. The bond of the contractor and the payment of estimates as the work proceeds shall be regulated by the provisions of the General Code of Ohio relative to contractors' bonds and payment of estimates on contracts let by the county commissioners for the construction of county roads. If the commissioners so order, the work may be done by the purchase of materials and the employment of labor instead of by contract.

HISTORY: — 110 v. 270.

SEC. 6969. **[County commissioners may proceed if township trustees fail to act.]** In the event any township within the county does not make application in the manner herein provided within sixty days after any state aid funds provided by the general assembly shall be available, the board of county commissioners may proceed independent of township co-operation to construct, reconstruct or improve any section of highway on the county system of highways selected by them, and the state aid herein provided for shall be available for use and shall be paid in connection with such improvement in the manner herein pro-

vided. Upon the written statement of any board of township trustees that it is unable to co-operate with the county and state by reason of tax limitations, the county commissioners shall investigate or cause to be investigated such statement, and if satisfied the same is correct, such board of county commissioners shall be authorized to assume on behalf of the county all or such portion of the township's share as may be necessary.

HISTORY: — 110 v. 271.

SEC. 6970. **[Certification to state auditor; warrant.]** Immediately upon the execution of any contract under the provisions of this act the county commissioners shall cause to be made a certificate setting forth the number and section designations of the road covered by such contract, the mileage of such section to be improved, the contract price for such improvement, and the name of the township in which such improvement is situated, together with such other facts as the auditor of state of the state of Ohio may prescribe. Each such certificate shall be forthwith transmitted to the auditor of state of the state of Ohio together with a written endorsement thereon by the prosecuting attorney of the county that the contract in question has been let in conformity with the provisions of this act. Upon receipt of such certificate with the endorsement of the prosecuting attorney thereon, the auditor of state shall draw his warrant upon the treasurer of state against any appropriations from the general revenue fund made by the general assembly for state aid in the construction, reconstruction or improvement of county highways and apportioned to said county and unexpended, and shall make said warrant payable to the treasurer of said county and forthwith transmit the same to him. The amount so remitted shall be by the county treasurer placed in a special fund for the construction of said improvement and shall be expended for that and no other purpose. The certificate required to be made by section 5660 of the General Code of Ohio shall not be required as to any funds in the state treasury appropriated to aid counties in the construction, reconstruction or improvement of county highway systems and apportioned to any particular township, and designated by the county commissioners of the county for use therein. Where work is done by force account, the certificate to the auditor of state herein provided for shall be issued after the county, township and property owners' shares of the funds have been provided, and at the time the order to do the work is made by the county commissioners.

HISTORY: — 110 v. 271.

SEC. 6971. **[Appropriations by general assembly.]** For the purpose of encouraging the construction of a secondary or county system

of highways and rendering effective the foregoing sections and extending necessary state aid in the construction, reconstruction or improvement of the several systems of county highways there shall be appropriated by the General Assembly out of the general revenue fund of the state for use annually in each township within the state of Ohio under the provisions of this act such sum as shall be deemed just and reasonable, but in no event less than one thousand dollars or more than two thousand dollars per township per annum. All aid furnished by the state under the provisions of the foregoing sections shall be paid from such appropriations.

HISTORY: — 110 v. 272.

SEC. 6972. **[Supplementary only.]** This act shall be supplementary to all existing provisions of law for the construction and improvement of highways by the state and the counties or townships therein, and no such section of law or part thereof shall be held to be repealed or otherwise affected by this act.

HISTORY: — 110 v. 272.

CHAPTER VI

Improvement of Streets and Alleys Outside Municipalities by County Commissioners

SEC. 6973. **[Grading, draining, paving, etc., of platted lands outside of municipalities.]** The board of county commissioners of any county within the state shall have power as hereinafter provided to improve by grading, draining, paving, construction storm sewers, sidewalks, curbs and gutters, or by otherwise improving the same, any road, street or alley or portion thereof lying within or bounded on both sides thereof by any platted lands, and situated without a municipal corporation.

HISTORY: — 110 v. 287.

SEC. 6974. **[Petition shall contain 51% of owners.]** When a petition is presented to the board of county commissioners of any county asking for the improvement of any such road, street or alley or portion thereof, and specifying the general character of the improvement desired, signed by at least fifty-one per cent of the land or lot owners, residents of such county, who are to be specially assessed for said improvement as hereinafter provided, the county commissioners shall within thirty days after such petition is presented, go upon the line of said proposed improvement, and after viewing the same determine whether the public convenience and welfare require that such improvement be made.

HISTORY: — 110 v. 287.

SEC. 6975. **[What shall not be counted against petition.]** In determining whether the required number of persons have signed the petition asking for said improvement, necessary to give the county commissioners jurisdiction thereof, the following persons shall not be counted either for or against the improvement:

Owners of life and leasehold estates;

Minors, and other persons under legal disability, unless represented by legal guardians, in which case the action of such guardian shall be binding upon such persons;

All tenants in common of any undivided estate, resident within the county, shall be counted as a unit, and if all are not united either for or against the improvement, none of such tenants in common shall be counted in determining whether the requisite number of persons have signed such petition;

No person signing a petition shall be permitted to withdraw therefrom unless the commissioners shall find that there was fraud or misrepresentation in obtaining his signature.

HISTORY: — 110 v. 288.

SEC. 6976. **[Plans, specifications, action by county commissioners.]** When the board of commissioners has determined that any road, street or alley, or portion thereof shall be improved as herein provided for, such board shall determine by a majority vote, the route and termini of such improvement, the kind and extent thereof, and at the same time shall order the county surveyor to make such surveys, plans, profiles, cross-sections, estimates and specifications as may be required for such improvement.

Only such storm sewers may be included in such plans as are needed solely for the drainage of the street to be improved and of the lots and lands to be specially assessed for the improvement. The county commissioners may order the county surveyor to make alternate surveys, plans, profiles, cross-sections, estimates and specifications, providing therein for different widths of roadway, different materials or other similar variations, and approve all or any number of such alternate surveys, plans, profiles, cross-sections, estimates and specifications.

HISTORY: — 110 v. 288.

SEC. 6977. **[Copies of plans; publication of notice of hearing; compensation for damage.]** Upon the completion of the surveys, plans, profiles, cross-sections, estimates and specifications for such improvement by the county surveyor, he shall transmit to the commissioners copies of the same; and thereupon the county commissioners shall cause to be published in a newspaper published and of general circulation within the county, if there be any such paper published in said county, but if there be no such paper published in said county then in a newspaper having general circulation in said county, once a week for two consecutive weeks, a notice that such improvement is to be made and that copies of the surveys, plans, profiles, cross-sections, estimates and specifications for said improvement are on file in the office of the county commissioners for the inspection and examination of all persons interested therein. Such notice shall also state the time and place for hearing objections to said improvement, and for hearing claims for compensation for lands and property to be taken for said improvement or damages sustained on account thereof, and that unless such claims are filed in writing with the county commissioners on or before the time fixed for hearing said claims the same shall be waived, except as to minors and other persons under disability.

HISTORY: — 110 v. 288.

SEC. 6978. **[What notice shall contain; service of notice.]** In the event that land or property is to be taken for such improvement, such notice shall state whose land or property is to be appropriated, and the county commissioners shall also cause such notice to be served at least ten days before said hearing on the owner of such piece of property to be appropriated. If resident within the county, such service shall be made by the county surveyor or his deputy or assistant by handing to each person personally a copy of such notice, or by leaving the same at the usual place of residence of such person. If any owner or owners are non-residents of the county, a copy of the newspaper containing such notice shall be mailed by the clerk of the board of county commissioners to each such owner whose property is to be taken, if his address be known to said clerk. Return of the time and manner of service shall be made and filed with the county commissioners on or before the date fixed for hearing claims for compensation.

HISTORY: — 110 v. 289.

SEC. 6979. **[Claims in writing to be filed with county commissioners; appeal.]** All claims for damages sustained on account of, or incident to such improvement, and claims for compensation for land and property to be taken, shall be in writing, setting forth the amount of damages or compensation, or both, claimed, together with a description of the property to be taken or damaged, and the same shall be filed with the board of commissioners of said county on or before the time fixed for hearing such claims.

The board of county commissioners shall upon actual view of the premises, allow compensation for land or property taken, and such damages as in their judgment will accrue from the construction of said improvement, to each person, firm or corporation making application therefor as herein provided, and they shall award such compensation and damages without any application to minors or other persons under disability, owning lands or property to be taken or damaged by the proposed improvement. Such compensation and damages shall be computed without deduction for benefits to such land or property.

Any person, firm or corporation aggrieved by the finding of the commissioners upon any application for compensation or damages may appeal to the probate court by giving the notice provided for with respect to appeals in road cases, and by filing the bond therein provided, and such proceedings shall be thereafter had upon such appeal, as are provided for by law.

HISTORY: — 110 v. 289.

SEC. 6980. **[Resolution to proceed with improvement.]** If, after hearing and determining all claims, for compensation and damages on

account of land or property taken for said improvement, or after the determination of such claims in the probate court on appeal, said board of commissioners is still satisfied that the public convenience and welfare require that such improvement be made, and that the cost and expense thereof will not be excessive in view of the public utility thereof, said commissioners shall order by resolution that they proceed with such improvement, and shall adopt the surveys, plans, profiles, cross-sections, estimates and specifications therefor, as reported by the surveyor, or with such modifications thereof as the commissioners and surveyor may agree upon.

If, in view of the amount of the compensation and damages allowed or for any other just cause said board of commissioners is of the opinion that said improvement should not be made, the commissioners shall so order.

HISTORY: — 110 v. 290.

SEC. 6981. **[Cost to be assessed against abutting lands.]** The entire compensation, damages, costs, and expenses of the improvement, including the expense of engineer and inspection, shall be assessed against the real estate abutting upon said improvement according to the benefits accruing to such real estate.

HISTORY: — 110 v. 290.

SEC. 6982. **[Estimated assessment; publication; objections; hearing; lien on lands.]** As soon as all questions of compensation and damages have been determined, the county surveyor shall make, upon actual view, an estimated assessment upon the real estate to be charged therewith of the compensation, damages, costs and expenses of said improvement. Such estimated assessment shall be according to the benefit which will result to such real estate. In making such estimated assessment the surveyor may take into consideration any previous special assessments made upon such real estate for road improvements. The schedule of such estimated assessment shall be filed in the office of the county commissioners for the inspection of the persons interested. Before adopting the estimated assessment so made and reported, the commissioners shall publish once each week for two consecutive weeks in some newspaper published and of general circulation in the county, if there be any such paper published in the county but if there be no such paper published in said county then in a newspaper having general circulation in said county, notice that such estimated assessment has been made, and that the same is on file in the office of the county commissioners, and the date when objections, if any, will be heard to such assessment. If any owner of property affected thereby desires to make objections, he may file his objections to said assessments in writing with

the county commissioners before the time for said hearing. If any objections are filed the county commissioners shall hear the same and act as an equalizing board, and they may change said assessments if, in their opinion, any change is necessary to make the same just and equitable, and such commissioners shall approve and confirm said assessments as reported by the surveyor or modified by them. Such assessments when so approved and confirmed shall be a lien on the land chargeable therewith.

HISTORY: — 110 v. 290.

SEC. 6983. **[Assessments to be entered on special duplicate; bonds; apportionment; appeal.]** All assessments, with interest accrued thereon, made under the provisions of this act, shall be placed by the auditor upon a special duplicate to be collected as other taxes, and the principal shall be payable in not more than twenty semi-annual installments extending over a period of not more than ten years, as determined by the county commissioners. In the event that bonds are issued to pay the compensation, damages, costs and expenses incident to such improvement, the principal sum of such assessments shall be payable in such number of equal semi-annual installments as will provide a fund for the redemption of the bonds so issued, and such assessments shall bear interest from the date of and at the same rate as the bonds, and the interest shall be collected in like manner as the principal of such assessments.

If any lands to be assessed are subject to a life estate, the assessments made thereon shall, upon application of the life tenant to the commissioners, be apportioned between the owner of the life estate and the owner of the fee in proportion to the value of their respective estates. Upon the filing of the application the commissioners shall fix a date for hearing the same and cause notice of such hearing to be served on the owner of the fee in the manner provided by section six of this act. Either party to such apportionment may appeal to the probate court of the county from the decision of the commissioners relating to the apportionment of such assessment by giving the notice provided for in section 6891-1 of the General Code and by filing the bond provided for therein, and such proceedings shall thereafter be had upon such appeal as are provided for appeals in road cases.

HISTORY: — 110 v. 291.

SEC. 6984. **[May issue bonds in anticipation of collection; advertisement.]** The county commissioners, in anticipation of the collection of such assessments, or any part thereof, may whenever, in their judgment it is deemed necessary, sell the bonds of said county in any amount not greater than the aggregate sum necessary to pay the estimated compensation, damages, cost and expenses of such improvement. Such

bonds shall state for what purpose they are issued and shall bear interest at a rate not to exceed six per cent per annum, payable semi-annually, and in such amounts and to mature at such times as the commissioners shall determine, subject to the provision however that said bonds shall mature in not more than ten years. Such bonds shall be full, general obligations of the county, and for the payment of the principal and interest of the same, the full faith, credit and revenues of the county shall be pledged, and prior to the issuance of such bonds the county commissioners shall provide for the levying of a tax upon all the taxable property of the county to cover any deficiencies in the levy, payment or collection of the special assessments anticipated by such bonds. The sale of such bonds shall be advertised once not later than two weeks prior to the date fixed for such sale in a newspaper published and of general circulation within such county, if there be any such newspaper published in said county, but if there be no such paper published in said county then in a newspaper having general circulation in said county. Such bonds shall be sold to the highest bidder for not less than par and accrued interest. The proceeds of such bonds shall be used exclusively for the payment of the compensation, damages, costs and expenses of the improvement for which they are issued. The making of the special assessments hereinbefore referred to shall not be a condition precedent to the issuance of bonds under the provisions of this section, and such special assessments may be made either before bonds are issued under the provisions of this section or after the issuance of such bonds.

HISTORY: — 110 v. 291.

SEC. 6985. **[Publication of notice for bids; contract.]** After the commissioners have decided to proceed with said improvement, they shall advertise for bids once not later than two weeks prior to the date fixed for the letting of the contract in a newspaper published and of general circulation in said county, if there be any such paper published in said county, but if there be no such paper published in said county then in a newspaper having general circulation in said county. Such notice shall state that copies of the surveys, plans, profiles, cross-sections, estimates and specifications for such improvement are on file in the office of the county commissioners, and the time within which bids will be received. The commissioners shall award the contract to the lowest responsible bidder. The contract shall be let upon the basis of lump sum bids, unless the commissioners order that the same be let upon the basis of unit price bids, in which event it shall be let upon such basis. The bids received shall be opened at the time stated in the notice. The county commissioners shall have the right to reject all bids.

HISTORY: — 110 v. 292.

SEC. 6986. **[Conditions of bond.]** Before entering into a contract, the county commissioners shall require a bond payable to the state of Ohio, for the use of the said county in a sum equal to one-half of the estimated cost of the work with good and sufficient sureties or with a surety company authorized to do business in the state of Ohio, conditioned on the faithful performance of the work in accordance with the plans and specifications. Such bonds shall also indemnify the county against the damages that may be suffered by failure to perform such contract according to the provisions thereof and in accordance with the specifications for said improvement, and also against damages for personal or other injuries resulting from any negligence or violation of law on the part of the contractor.

HISTORY: — 110 v. 292.

SEC. 6987. **[Payment on contract; estimates.]** The payment of the cost of the construction of such improvement shall be made as the work progresses upon estimates made by the county surveyor. Except as hereinbefore provided, no payment on account of the contract for any improvement shall before the completion of said contract exceed ninety per cent of the value of the work performed to the date of such payment, and except as hereinafter provided ten per cent of the value of the work performed shall be held until the final completion of the contract in accordance with the plans and specifications. In addition to the above payments on account of work performed, the county surveyor may also, if he deem it proper, allow to the contractor an estimate not to exceed ninety per cent of the value of material delivered on the site of the work, or at a railroad station or siding or other point in the general vicinity thereof, but not yet incorporated therein, provided such material has been inspected and found to meet the specifications. When an estimate is allowed on account of material delivered on the site of the work or in the vicinity thereof, but not yet incorporated therein, such material shall thereupon become the property of the county, but in case such material is stolen or destroyed or damaged by casualty before being used, the contractor will be required to replace the same at his own expense. When the retained percentage plus the difference between the contract price and the estimates allowed exceeds by more than fifteen per cent the estimated cost of completing the work as determined by the county surveyor, the county surveyor may, if he deem it proper, allow to the contractor an estimate equal to all or any part of said excess sum, retaining not less than the estimated cost of completing the work as determined by him plus fifteen per cent thereof.

HISTORY: — 110 v. 293.

SEC. 6988. **[County surveyor shall superintend; allowance for extra work.]** The work shall be done under the general care and

superintendence of the county surveyor, and it shall be his duty to see that all provisions of the specifications are complied with by the contractor. Allowances for extra work rendered necessary by unforeseen contingencies not contemplated by the contract may be made, but only in the manner provided by law with respect to the construction of county roads. Where the plans for any improvement authorized by this act include the paving of a road, street or alley in which there is a sanitary sewer or water or gas main, such plans shall include the extension to the curb of all necessary and proper service connections with such sewer or main. After any improvement is laid under the provisions of this act, any future installation of mains or public utility lines shall, so far as possible, be made between the curb and property line.

No road, street or alley improved under the provisions of this act, shall by reason of such improvement become a county road. Any road, street or alley defined and described in section one of this act, and improved either under the provisions of this act or otherwise, may at any time be repaired by the county commissioners in the manner herein provided with respect to the original improvement thereof.

HISTORY: — 110 v. 293.

SEC. 6989. The powers conferred by this act shall be supplementary to those now conferred by law upon county commissioners with respect to the improvement of public highways, and the authority of commissioners in such respect under existing laws shall be in no way altered or abridged by the terms of this act.

HISTORY: — 110 v. 294.

CHAPTER VII

County Surveyor

SEC. 2782. **[Election and term of office.]** There shall be elected in each county, at the regular election in 1924, a county surveyor, who shall assume office on the first Monday of September next after his election and who shall hold said office for a period of three years and four months or until the first Monday of January, 1929. There shall be elected in each county, at the regular election in 1928, and biennially thereafter, a county surveyor who shall assume office on the first Monday in January next after his election and who shall hold said office for a period of two years.

HISTORY: — R. S. §1163; 95 v. 376; 98 v. 273; 110 v. 263.

SEC. 2792. **[Duties of county surveyor.]** The county surveyor shall perform all duties for the county now or hereafter authorized or declared by law to be done by a civil engineer or surveyor. He shall prepare all plans, specifications, details, estimates of cost, and submit forms of contracts for the construction or repair of all bridges, culverts, roads, drains, ditches and other public improvements, except buildings, constructed under the authority of any board within and for the county. When required by the county commissioners, he shall inspect all bridges and culverts, and on or before the first day of June of each year report their condition to the commissioners. Such report shall be made oftener if the commissioners so require: Provided, the county surveyor shall not be required to prepare plans, specifications, details, estimates of costs or forms of contracts for emergency repairs authorized under section 2792-1 of the General Code, unless he deems them to be necessary.

HISTORY: — R. S. § 1166; 87 v. 295; 89 v. 29; 98 v. 245; 110 v. 133.

SEC. 2792-1. **[Emergency repairs; fund.]** For the purposes of this act, necessary repairs, the total cost of which is not more than two hundred dollars, shall be deemed emergency repairs. The county surveyor shall make all emergency repairs on all roads, bridges and culverts in the county, including state highways, and shall keep on hand at all times a supply of material for the purposes of making such repairs. Upon report to the county surveyor of any road or bridge in the county needing immediate attention, the county surveyor shall, if he deems it an emergency repair, proceed at once to make such repair

by force account, without preparing plans, specifications, estimates of cost or forms of contract.

The county commissioners are hereby authorized to appropriate a sum of money each year sufficient to enable the county surveyor to carry out the purposes of this section. Such sum shall constitute the "county surveyor's emergency repair fund." All expenses incurred in employing extra help or in purchasing materials used in such repairs shall be paid from such fund on vouchers signed by the county surveyor.

HISTORY:—110 v. 133.

SECTION 7181. (No change since 1922 edition.)

Section 7181, General Code, provides that county surveyors shall give their entire time and attention to the duties of the office, and provides a salary therefor, based on the mileage, population and tax valuation of the county, and does not provide for any additional compensation for added services.

Sectin 6691, General Code, as amended in House Bill No. 1, passed by the 86th General Assembly, provides that county commissioners may delegate the duties of county ditch supervisors to the county surveyor, but does not provide any additional compensation to the county surveyor for such services.

Op. Attorney General No. 2774, Sept. 11, 1925.

SEC. 7181-1. (No change since 1922 edition.)

SEC. 7182 (No change since 1922 edition.)

The amendment of Section 7182 G. C. in 109 O. L. 168, contemplates that the Director of Highways and Public Works shall fix compensation to be paid by the state to county surveyors in all cases where such county surveyors are designated to have charge within their counties of highways, bridges and culverts under the control of the state. Such compensation may be fixed on a per diem basis having reference to the annual salary paid to the county surveyor by the county. Any compensation so earned by the county surveyor is to be paid by him into the county treasury to the credit of the general county fund.

Op. Atty. Gen. (1922) p. 120.

See 112 O. S. 356 as cited under Section 154-40.

SEC. 7183. (Repealed 107 v. 142.)
SEC. 7184. (No change since 1922 edition.)
SEC. 7185. (Repealed 109 v. 171.)
SEC. 7186. (Repealed 107 v. 142.)
SEC. 7187 to 7192. (No change since 1922 edition.)
SEC. 7193. (Repealed 107 v. 142.)
SEC. 7194. (Repealed 107 v. 142.)
SEC. 7195. (Repealed 107 v. 142.)
SEC. 7196. (No change since 1922 edition.)
SEC. 7197. (Repealed 107 v. 142.)
SEC. 7198. (No change since 1922 edition.)
SEC. 7199. (Repealed 107 v. 142.)

SEC. 7200 (No change since 1922 edition.)
SEC. 7201. (No change since 1922 edition.)
SEC. 7202. (No change since 1922 edition.)
SEC. 7203. (No change since 1922 edition.)
SEC. 7204. **[Removal of obstructions by persons, companies, and public service corporations; relocation of properties; consent and approval of director.]** It shall be the duty of all persons, partnerships and corporations using or occupying any part of a highway, bridge or culvert with telegraph or telephone lines, steam, electrical, or industrial railways, oil, gas, water, or other pipes, mains, conduits, or any object or structure, other than by virtue of a franchise legally granted, to remove from the bounds of such highway, bridge or culvert, their poles and wires, connected therewith, or any and all tracks, switches, spurs, or oil, gas, or water pipes, mains, conduits, or other objects or structures when the same, in the opinion of the director of highways and public works, constitute obstructions in any inter-county highway or main market road or the bridges or culverts thereon, or interfere or may interfere with the proposed improvement of such inter-county highway or main market road, or the bridges or culverts thereon, or the use of such inter-county highway or main market road, or the bridges or culverts thereon, by the traveling public; or when the same, in the opinion of the county commissioners, constitute obstructions in any highway, other than inter-county highways or main market roads, or the bridges or culverts thereon, or interfere, or may interfere, with the proposed improvement of such highways or the bridges or culverts thereon, or the use thereof by the traveling public. Provided, however, that by obtaining the consent and approval of the director of highways and public works such persons, partnerships or corporations may relocate their properties within the bounds of such inter-county highways or main market roads or bridges or culverts, in such manner as the director of highways and public works may prescribe, but the giving of such consent and approval shall be within the discretion of the director; and by obtaining the consent and approval of the county commissioners, such persons, partnerships, and corporations may relocate their properties within the bounds of such highways, other than inter-county highways and main market roads, or the bridges or culverts thereon, in such manner as the county commissioners may prescribe. The giving of such consent and approval, by either the director of highways or the county commissioners shall not be construed to be the granting of any franchise rights.

It shall be the duty of such persons, partnerships or corporations so occupying any part of a highway, bridge, or culvert, under and by virtue of a franchise legally granted, to relocate their properties within the bounds of such highway or the bridges or culverts thereon when the same, in the opinion of the director of highways and public works, constitute obstructions in any inter-county highway or main market road,

or the bridges or culverts thereon, or interfere with, or may interfere with the proposed improvement, of such inter-county highways or main market roads, the bridges or culverts thereon, or the use thereof by the traveling public, which relocation in such inter-county highways and main market roads or the bridges or culverts thereon, shall be in the manner prescribed by the director of highways and public works. They shall in like manner relocate their properties when the same, in the opinion of the county surveyor, constitute obstructions in any highway, other than inter-county highways or main market roads, or the bridges or culverts thereon, or interfere with the construction, improvement, maintenance or repair of such highways, bridges or culverts, or the use thereof, by the traveling public.

If, in the opinion of the director of highways and public works, such persons. partnerships or corporations have obstructed any inter-county highway or main market road, or bridges or culverts thereon, or if any of their properties are, in his opinion, so located that they do or may interfere with the proposed improvement, maintenance or repair of such inter-county highway or main market road, bridges or culverts, or the use thereof by the traveling public or, if in the opinion of the county surveyor, such persons, partnerships or companies have obstructed any highway, other than inter-county highways and main market roads, or bridges or culverts thereon, or if any of their properties are, in his opinion so located that they do or may interfere with the proposed improvement, maintenance or repair of such highways, bridges or culverts, or the use thereof by the traveling public, said director of highways and public works or county commissioners shall notify such person, partnership or corporation directing the removal of the obstruction or property or the relocation of such properties, and, if such person, partnership or corporation shall not within five days proceed to remove or relocate the same and complete the removal or relocation of the same within a reasonable time, the director of highways and public works or commissioners may remove or relocate the same by employing the necessary labor. The expense thereby incurred shall be paid in the first instance out of any moneys available for highway purposes, and not encumbered for any other purpose, and the amount thereof shall be certified to the proper officials to be placed on the tax duplicate against the property of such person, partnership or corporation, as provided by law, to be collected as other taxes and in one payment, and the proper fund shall be reimbursed out of the money so collected, or the amount thereof may be collected from such person, partnership or corporation by civil action by the state of Ohio on the relation of the director of highways and public works or by the county commissioners as the case may be.

HISTORY: — 106 v. 619; 107 v. 116; 111 v. 280.

SEC. 7204-1. No change since 1922 edition.)

SEC. 7204-1a. **[Removal of obstructions by land owners.]** It shall be the duty of the owner or occupant of lands situated along the highways to remove all obstructions within the bounds of the highways which have been placed there either by themselves or their agents, or with their consent.

However, by first obtaining the consent and approval of the director of highways and public works, obstructions heretofore erected within the bounds of the inter-county highways and main market roads of the state, or bridges or culverts thereon, and by first obtaining the consent and approval of the county commissioners, obstructions heretofore erected in highways, other than inter-county highways and main market roads or bridges or culverts thereon, may be permitted to remain upon such conditions as said officials may impose, provided such obstructions do not interfere with traffic or with the construction or repair of such highways.

It shall be unlawful for any person, partnership or corporation to hereafter erect within the bounds of any highway or on the bridges or culverts thereon, any obstruction whatever, without first obtaining the consent and approval of the director of highways and public works in case of inter-county highways and main market roads and the bridges and culverts thereon, and the consent and approval of the county commissioners in case of highways other than inter-county highways and main market roads and the bridges and culverts thereon.

For the purposes of this act all advertising or other signs and posters erected, displayed or maintained on any public highway, or along or near the same and in such a location as to obstruct at curves or intersecting roads the view of drivers using such highway, shall be deemed obstructions, but this section shall have no application to crossing signs erected in compliance with section 8852 of the General Code of Ohio, at the crossings of highways and railroads.

It shall be the duty of the director of highways and public works and the county commissioners to enforce the provisions of this section and in so doing, said officials may avail themselves of all the provisions of section 7204 of the General Code.

HISTORY: — 111 v. 282.

SEC. 7204-2. (No change since 1922 edition.)

SEC. 7204-3. (No change since 1922 edition.)

SEC. 7205. (No change since 1922 edition.)

1. If sidewalk improvements outside of municipalities are undertaken as authorized by Sections 7205 and 7206 G. C., contracts are to be entered into by the county surveyor and not by the county commissioners or township trustees.

2. No part of the services of the county surveyor or any of his regularly employed assistants in engineering inspection or superintendence of such sidewalk improvement is to be included in the cost for assessment purposes. However, the

expense of assistants specially employed for a particular project may be so included.

Op. Atty. Gen. (1922), p. 944.

SEC. 7206. (No change since 1922 edition.)
SEC. 7207. (No change since 1922 edition.)
SEC. 7208. (No change since 1922 edition.)
SEC. 7209. (No change since 1922 edition.)
(See 112 O. S. 385, as cited under Sec. 9180.)
SEC. 7210. (No change since 1922 edition.)
SEC. 7211. (No change since 1922 edition.)
SEC. 7212. (No change since 1922 edition.)
SEC. 7213. (No change since 1922 edition.)

CHAPTER VIII

Township Trustees

SEC. 3270-1. **[Annual inventory; time; filing.]** The township trustees shall make an inventory on the second Monday of January of each year of all the materials, machinery, tools and other township supplies in their possession. Such inventory shall be a public record and shall be made in duplicate and one copy filed with the clerk of the board of township trustees and one copy with the county surveyor.

HISTORY: — 111 v. 14.

SEC. 3277. **[How payment shall be made.]** The trustees shall draw an order on the township treasurer in favor of such justice or clerk for the amount of such judgment and costs, and on presentation the township treasurer shall pay them from the appropriate funds, if there are any such funds in the treasury. The trustees shall not be required to issue their order for the amount of judgment, when it has been appealed or taken on error to a higher tribunal, until final judgment thereon.

HISTORY: — R. S. § 1461; 51 v. 489; 110 v. 31.

SEC. 3298-1 to 3298-12. (No change since 1922 edition.)
SEC. 3298-13. (No change since 1922 edition.)

Separately owned mineral rights pertaining to a tract of land the surface of which abuts upon a road improvement, constitute real estate abutting upon such improvement.

Op. Atty. Gen. (1922), p. 856.

SEC. 3298-14 to 3298-53a. (No change since 1922 edition.)
SEC. 3298-20. (No change since 1922 edition.)

Trustees of a township, owning a stone or gravel quarry, cannot purchase additional lands for such quarry without the submission of the question to the voters of the township and their approval thereof.

Op. Atty. Gen. (1923), p. 33.

SEC. 3298-23. (No change since 1922 edition.)

See Opinions of Attorney General (1923), p. 33, cited under Section 3298-20, above.

SEC. 3370. (No change since 1922 edition.)

A township trustee who has been designated under Section 3370 of the General

Code, to have charge of the maintenance and repair of township roads within his township, and who, while acting under such designation, has used his own automobile, cannot be reimbursed for money expended for oil and gasoline while so engaged.

Op. Atty. Gen. No. 2182, Jan. 29, 1925.

In performing the mandatory duty of keeping township roads in good repair, imposed by the provisions of Sections 3370 and 7464 of the General Code, township trustees may appropriate and use township road funds in the construction and maintenance of bridges and culverts on township roads within their respective jurisdictions.

Opinion found in Volume 2, page 1813 of the Opinions of the Attorney General for 1917, modified.

Op. Atty. Gen. No. 2557, June 10, 1925.

See Opinions of Attorney General (1923), p. 636, cited under Section 3371-1; following:

Sec. 3371-1. (No change since 1922 edition.)

1. Township trustees are authorized to maintain or repair road culverts.

2. In connection with township roads, such authority is subject to the conditions and limitations as are contained in Section 3371-1 of the General Code as follows: (1) Such maintenance and repair shall be subject to the general supervision and direction of the county surveyor; (2) All expenditures made by them for such maintenance and repair purposes shall, where the amount involved exceeds fifty dollars, receive the approval of the county surveyor before payment is made; and also as are contained in Section 3373 of the General Code as follows: When they proceed by contract they shall, in case the amount involved exceeds two hundred dollars; (3) Let the contract to the lowest responsible bidder after advertisement as is in said section provided; (4) The contract shall be performed under the supervision of a member of the board of township trustees or the township highway superintendent; if they proceed by force account; (5) The work shall be done under the direction of the board of township trustees or the township highway superintendent, and, (6) All purchases of materials, machinery and tools shall, where the amount involved exceeds five hundred dollars, be made from the lowest responsible bidder after advertisement made in the manner provided in said section.

3. In connection with county roads or inter-county highways or main market roads, in addition to the conditions and limitations set out in paragraph two of this syllabus, they must also obtain the approval of the county commissioners or the director of highways and public works, as the case may be, as provided in Section 3370 of the General Code.

Op. Atty. Gen. (1923), p. 636.

Sec. 3373. (No change since 1922 edition).

Under the provisions of Section 3373 G. C. the township trustees may purchase land upon which to erect a building to house and store machinery and tools owned by the township, if in the judgment of such trustees the same is necessary and essential, in order to preserve such tools and equipment.

In awarding a contract for the construction of such a building, the trustees should comply with the provision of law relating to advertising and giving notice to bidders.

Op. Atty. Gen. No. 2803, Sept. 25, 1925.

A contract purporting to have been entered into by a road machinery company with township trustees which is in form a lease, but which is in substance and practical operation a contract of sale, in that at the end of the third year of the lease the township trustees have the option of purchasing the machinery for a trivial sum in addition to the three years rental which they already will have paid in yearly installments under the contract is not authorized by the terms of Section 3373 G. C., or otherwise; and such purported contract because of its obvious tendency to destroy the principle of competitive bidding in the purchase of road machinery as required by said Section 3373 is void as being contrary to public policy.

Op. Atty. Gen. (1922) p. 499.

SEC. 3428. **[Petition for lighting in unincorporated districts.]** When the owners of more than one-half of the feet front of the lots and lands abutting on the streets and public ways of any unincorporated district in a township, sign a petition for artificial lighting of the streets and public ways in such district, during the night time or any part thereof, and file it with the clerk of the township, he shall thereupon give notice to the township trustees of the filing of such petition together with a copy thereof.

HISTORY: — 99 v. 490, § 1.

SEC. 3429. **[Contents and effect of petition.]** Such petition shall specify the metes and bounds of the district but shall include no lands more than six hundred and sixty feet from, nor any lands not abutting on the streets and public ways in such district. The signing of such petition by a property owner shall be a waiver by him of all claims for compensation and damages for lands necessarily appropriated for the purpose of supporting and maintaining such lights.

HISTORY — 99 v. 490; § 1; 99 v. 490, § 4.

SEC. 3430. **[Notice of petition.]** The township clerk shall fix a day for the hearing of the petition not more than thirty days from the date of the notice to the trustees. He shall prepare and deliver to the petitioners, or any one of them, a notice in writing directed to the lot and land owners and to the corporations, either public or private, affected by the improvement, setting forth the substance, pendency and prayer of the petition, and the time and place of hearing thereon.
490, § 2.)

HISTORY: — 99 v. 490, § 2.

SEC. 3431. **[Service and return of notice.]** At least fifteen days before the day set for hearing, a copy of such notice shall be served upon each lot or land owner or left at his or her usual place of residence, and upon an officer or agent of each such public or private corporation having its place of business in such district. On or before the day of

the hearing, the person who serves the notices shall make return thereon, under oath, of the time and manner of service and file such return with the clerk.

HISTORY: — 99 v. 490, § 2.

SEC. 3432. **[Notice to non-residents by publication.]** At the same time, the clerk shall give like notice to each non-resident lot or land owner by publication once in a newspaper printed and of general circulation in the county in which the district is situated, at least two weeks before the day set for hearing, which notice shall be verified by affidavit of the printer or other person knowing the fact, and filed with the clerk on or before the day of hearing. No further notice of the petition or the proceedings thereunder shall thereafter be required.

HISTORY: — 99 v. 491, § 3.

SEC. 3433. **[Hearing and determination.]** At the time and place specified in the notice for hearing, the trustees shall meet and hear any and all proof offered by any of the parties affected by such improvement, and other persons competent to testify. They shall go over and along such streets and public ways, and, by actual view thereof, and of the premises along and adjacent thereto to be lighted or benefited thereby, determine the necessity thereof. They may adjourn from time to time and to such place as necessity requires.

HISTORY: — 99 v. 491.

SEC. 3434. **[Number of lights specified by trustees.]** If the trustees decide for such improvement, they shall specify the number of lights they deem necessary for properly lighting the streets and public ways in the district, determine the candle power thereof and locate the points where the lights shall be located and the kind of supports for them.

HISTORY: — 99 v. 491.

SEC. 3435. **[Notice to bidders; reception and rejection.]** Thereupon the trustees shall post in three of the most conspicuous public places in the district a notice specifying the number, candle power, and location of such lights, the kind of supports therefor, the time, which shall not be less than thirty days from the posting of the notices, and the place the trustees will receive bids to furnish such lights The trustees shall accept the lowest and best bid, if the successful bidder furnishes a bond in an amount with sureties approved by them, for the faithful furnishing such lights according to specifications. The trustees may reject all bids.

HISTORY: — 99 v. 491.

SEC. 3436. **[Contract, time of; expenses assessed; how collected]** On accepting such bid and bond, the trustees shall enter into a contract with the successful bidder for the furnishing of such lights according to specifications. The contract shall not be for a longer term than ten years. The cost and expenses of furnishing and maintaining such lights and of the proceedings in relation thereto, shall be paid from a fund raised by special assessments against the lots and lands in the district which are benefited by such lighting, and such assessments against any lot or parcel of land shall not be in excess of the special benefits resulting thereto from such lighting and such assessments shall be paid and collected in equal semi-annual installments equal in number to twice the number of years for which the contract is made, and shall be paid and collected in the same manner and times as taxes are paid and collected; and such assessments may be made and levied by any one of the following methods:

First: By a percentage of the tax value of the property assessed.

Second: In proportion to the benefits which may result from the lighting.

Third: By the foot frontage of the property bounding and abutting upon the street or streets, or public way or ways so lighted.

HISTORY: — 99 v. 491; 110 v. 308.

SEC. 3437. **[Increase in number of lights.]** At any time during the term of the contract but not oftener than once in each year, unless mutually satisfactory to both parties to the contract, the trustees may increase the number of lights to be maintained under the contract, at not more than the same price per light, and the contract shall provide for such change in number of lights.

HISTORY: — 99 v. 491.

SEC 3438. **[Inspectors.]** The trustees may employ inspectors at such times as they may deem proper to test such lights and determine whether they comply with the contract. The compensation of such inspectors shall be paid from the same fund.

HISTORY: — 99 v. 492.

SEC. 3439. **[Certificate by trustees to auditor; assessments.]** The township trustees shall certify to the county auditor the boundaries of such district, and when requested by the trustees so to do the auditor shall apportion the valuation for taxation of any lot or parcel of land lying partly within and partly without the district.

The township trustees shall by resolution assess against the benefited lots and parcels of land in such district, in accordance with section 3436 of the General Code and by one of the methods therein provided, the

entire cost and expenses of furnishing and maintaining such lights for the entire period of the contract therefor and the proceedings in relation thereto, and shall certify same to the county auditor who shall annually place upon the tax duplicate for collection in semi-annual installments as provided in section 3436 of the General Code, the two installments of the assessment for that year, the same to be paid and collected as provided in section 3436 of the General Code.

If the number of lights to be furnished and maintained in any such district under any such contract should be increased pursuant to the provisions of section 3437 of the General Code the trustees shall make such additional assessments as may be necessary to pay the cost of furnishing and maintaining such additional number of lights, such additional assessments to be made, certified and collected the same as an original assessment hereunder, but to be only for the unexpired part of the term of the contract.

Said assessments when collected shall go into the township treasury and shall be used by the trustees only for the purpose for which they were levied and collected.

HISTORY: — 99 v. 492; 110 v. 309.

SEC. 3440. **[Compensation of officers.]** All officers shall receive for such services the same fees allowed for similar services.

HISTORY: — 99 v. 492.

SEC. 3440-1. **[Authority to provide artificial lights outside of municipality.]** The township trustees of any township shall also have power to provide artificial lights for any territory within such township and outside the boundaries of any municipal corporation, when such territory constitutes a place of public gathering for the inhabitants of such township or of a large part thereof and such township trustees find that the public safety or welfare requires that such place be lighted. Such provision may be made either by installing a lighting system or by contracting with any person or corporation to furnish lights. In case such light be furnished under contract such contract may also provide that the equipment employed in supplying same may be owned either by the township or by the person or corporation supplying the same. No such contract shall be made to cover a period of more than ten years. The cost of installing and operating any such lighting system, or of any such light furnished under contract, shall be paid from the general (revenue) fund of the township treasury.

HISTORY: — 109 v. 69.

CHAPTER IX

Bridges

SEC. 2344. **[Contracts for erection, repair, etc., of superstructures.]** When it becomes necessary to erect a bridge the county commissioners shall determine the length and width of the superstructure, whether it shall be single or double track, and advertise for proposals for performing the labor and furnishing the materials necessary to the erection thereof. The commissioners shall cause to be prepared, plans, descriptions and specifications for such superstructure, which shall be kept on file in the auditor's office for inspection by bidders and persons interested, for a period of fifteen days prior to the date for receiving bids, and invite bids or proposals in accordance therewith.

HISTORY: — R. S. § 796; 68 v. 20; 85 v. 218; 111 v. 415.

SEC. 2345. **[Contracts on other plans may be considered.]** The county commissioners may also invite, receive and consider proposals on any other plan at the option of bidders, and shall require that any such plan together with specifications shall be filed in the office of the county auditor for a period of fifteen days prior to the date for receiving bids. Such plans and specifications shall show the number of spans, the length of each, the nature, quality and size of the materials to be used, the strength of the structure when completed, and whether there is any patent on the proposed plan, or on any, and if any, what part thereof.

HISTORY: — R. S. § 796; 68 v. 20; 85 v. 218; 111 v. 416.

SEC. 5638. (No change since 1922 edition.)

Section 2421, General Code, does not authorize the board of county commissioners to build bridges other than on established roads. Such board is without power to connect two state or county roads by a bridge, without first laying out and acquiring a road connecting such state or county roads. But where such board has been authorized by a vote of the electors under Section 5638, General Code, to expend in excess of $18,000 in the construction of a bridge on a given site connecting two state or county roads, it may thereafter lay out and acquire a road on such site, and then construct the bridge within the limitations of the authorization

State, ex rel., v. Commissioners — 107 O. S. 465.

Sections 2333 and 5638, General Code, are sections of general limitations on the power of county commissioners to levy a tax, appropriate money, or issue bonds, for the purpose of building county buildings, and are subject to a strict construction for the purpose of confining their operation within the limitations expressed.

A statute in order to be held an exception to the general provisions of another conferring power and limitation of power on an administrative board, must be couched in language so clear and unambiguous as to be free from doubt as to the intent of the legislature in declaring it to be an exception.

The language employed by the legislature in Section 2434, General Code, authorizing county commissioners to borrow money for the erection of a county jail, may not be construed as an exception to the limitation on its powers provided in Sections 2333 and 5638, General Code, but must be construed in pari materia with those sections.

When the voters of a county sanction the policy of building a county jail by voting a bond issue in an amount certain, the policy adopted is one involving the expenditure of no greater sum than that approved, and a building commission is without power to contract for such building under its adopted policy and plan involving an estimated expenditure of an amount in excess of that sanctioned by the voters.

State, ex rel., v. Andrews. 105 O. S. 489.

SEC. 7489. **[County may establish a free ferry.]** If a county bridge has been destroyed by fire, flood or any other cause, the county commissioners may cause to be established a free ferry in lieu thereof. They may also cause to be established a free ferry over any of the interior streams of the state where it is not expedient to build a bridge, and may cause the same to be maintained and operated. The cost of maintaining and operating such free ferry shall not exceed the interest on the probable cost of constructing a bridge across the stream.

HISTORY: — 110 v. 152.

SEC. 7491 to 7556. (No change since 1922 edition.)
SEC, 7557. (No change since 1922 edition.)

It is the duty of county commissioners to construct necessary bridges in cities on state and county roads over streams and public canals.

It is the duty of county commissioners to maintain and repair bridges in cities on state and county roads over streams and public canals.

County commissioners have no authority over, nor duty to perform in connection with either the construction or maintenance and repair of bridges on streets established by the city for the use and convenience of the city and not a part of a state or county road.

It is the duty of a city to construct and repair necessary bridges on streets established by the city for the use and convenience of the city and not a part of a state or county road.

It is the duty of a city to exercise care, supervision and control over bridges in the city and keep them open, in repair and free from nuisance, including both bridges over streams and public canals on state and county roads and bridges on streets established by the city for the use and convenience of the city and not a part of a state or county road.

Although under no legal duty to do so, a city is authorized to construct bridges over streams and public canals on state and county roads and within the limits of a city.

A city is authorized to make minor and extensive repairs on bridges over streams and public canals on state and county roads within the limits of the city,

notwithstanding it is the duty of the county commissioners to keep such bridges in repair.

A city may expend funds, which are the proceeds of bonds sold and issued for the purpose of constructing specific bridges, in the construction only of such bridges for the construction of which the bonds were issued.

A city is not authorized to expend funds, which are the proceeds of bonds sold and issued for the purpose of constructing specific bridges over streams and public canals on state and county roads within the limits of the city, in the construction and repair of bridges on streets established by the city for the use and convenience of the city and not a part of a state or county road.

Op. Atty. Gen. No. 2634, July 1, 1925.

Section 2421, General Code, does not authorize the board of county commissioners to build bridges other than on established roads. Such board is without power to connect two state or county roads by a bridge, without first laying out and acquiring a road connecting such state or county roads. But where such board has been authorized by a vote of the electors under Section 5638, General Code, to expend in excess of $18,000 in the construction of a bridge on a given site, it may thereafter lay out and acquire a road on such a site and then construct the bridge within the limitations of the authorization.

State, ex rel., v. Commissioners — 107 O. S. 465.

SEC. 7558 **[Joint county and railroad bridges.]** When the commissioners of any county are of the opinion that the welfare and convenience of the public will be served by the use of a bridge designed to carry the tracks of a railroad company or companies or of a union depot company or companies, or any or all of said companies, for general highway traffic, said county commissioners may contract with such company or companies in the manner hereinafter provided, for the joint construction, use and maintenance of such a bridge with provision for general highway traffic, in conjunction with and as a part of such railroad bridge, either at, above or below the grade or elevation at which said railroad tracks are constructed thereon.

HISTORY: — R. S. 4939; 70 v. 245; 110 v. 394.

SEC. 7558-1. **[What constitute "joint bridge."]** For the purposes of this act a bridge constructed, used or maintained, or to be constructed, used or maintained for general highway traffic above, below or at the grade of any bridge constructed or to be constructed by any of said company or companies and in connection therewith, shall be termed a "joint bridge".

HISTORY: — 110 v. 394.

SEC. 7558-2. **[Contract for construction, etc.]** Said contract shall provide for the construction, use and maintenance of that part of the joint bridge intended or to be used for general highway traffic and for sufficient pier supports to carry that part of the bridge so used or intended to be used for general highway traffic, and shall be executed by the board of county commissioners on behalf of any county pursuant

to authorization contained in the resolution determining to proceed with said joint bridge construction, as hereinafter provided, and by the president and secretary of any of said company or companies on behalf of said company or companies pursuant to authorization of their board or boards of directors.

HISTORY: — 110 v. 394.

SEC. 7558-3. **[Commissioners may establish new highway and change existing grades, etc.]** Whenever, in the opinion of the comsioners of any county, it is for the best interests and for the security and convenience of the public in carrying out the provisions of any contract for the construction, use and maintenance of a joint bridge, said county commissioners may establish new highways and widen, change the location of, alter, straighten, narrow or vacate a part or all of any public highway established or to be established under previous contract, or change the grade or grades thereof.

HISTORY: — 110 v. 394.

SEC. 7558-4. **[May appropriate property; approaches; damages; vacation of highways, etc.]** The commissioners of any county may in the making of such contract for the construction, use and maintenance of a joint bridge, provide for approaches to such joint bridge for general highway traffic, over or from any other public highway adjacent to such joint bridge, and may acquire lands or property for such joint bridge and approaches by dedication, purchase or appropriation in the manner provided by law for the dedication, purchase or appropriation of private property for public use, and may pay the cost of such construction, maintenance and use of such joint bridge or of the establishment, change of location, widening, altering, narrowing, straightening or vacation of a part or all of any public highway made necessary on account of the construction, use and maintenance of such joint bridge or to enjoy a more complete use of the same, and any damage resulting therefrom to persons or property, together with the cost of constructing said highway at its established, dedicated, changed, altered or widened location, together with any other cost or expense necessary or incident to the carrying out of the terms of said contract.

HISTORY: — 110 v. 395.

SEC. 7558-5. **[Resolution to alter, appropriate, apportionment of cost.]** In the event it is necessary in the construction, use or maintenance of such joint bridge to establish, alter, narrow or vacate a part or all of any public highway, or change the grade or grades thereof, the commissioners of such county may by resolution declare such necessity and its intention to make such highway modifications or alterations as above stipulated, and provide in said resolution the manner in which the

alterations or changes of such highway are to be made, providing also in said resolution the approximate cost of the same so far as the county is concerned, also what land or other property it is necessary to appropriate, and how their cost is to be apportioned between the county and said company or companies, also by whom the work of construction is to be done.

HISTORY: — 110 v. 395.

SEC. 7558-6. **[Exhibits showing location, elevation of road, etc., and plan of bridge.]** Prior to the passage of the resolution declaring such necessity there shall be filed with the commissioners of such county exhibits showing the location, elevation and width of any highway to be established, altered, narrowed, vacated in whole or part, or grade thereof as changed, and a general plan of said bridge showing that portion to be used for general highway traffic, the supports of the same, any approach or approaches to such bridge, together with such other information as may be required under the provisions of said contract.

HISTORY: — 110 v. 395.

SEC. 7558-7. **[Notice to be served on owners, claims to be filed.]** Notice of the passage of such resolution shall also be served upon the owners of property abutting upon that part of any highway to be altered, relocated, narrowed, vacated in whole or part, or any change of grade thereof, in the manner provided as to resolutions declaring the necessity for a street improvement of a municipal corporation, and all claims for damages caused by said highway changes or alterations shall be presented by the owners of said property within two weeks after the last publication or service of notice.

HISTORY: — 110 v. 395.

SEC. 7558-8. **[Damages to be assessed as in other cases.]** All claims for damages by reason of such improvement, filed as hereinbefore provided, shall be assessed and determined as in other cases of public improvement, wherein like claims are made, either before the beginning or after the completion of the proposed improvement, as the commissioners decide, when it is determined to proceed therewith.

HISTORY: — 110 v. 396.

SEC. 7558-9. **[Resolution to determine to proceed.]** After the passage of such resolution the commissioners shall determine whether they will proceed with the proposed improvement or not. If it is desired to proceed therewith, a resolution by the county commissioners shall be passed, which resolution must contain, in addition to the terms and

conditions stated in said resolution, a determination to proceed with the construction of said joint bridge.

HISTORY: — 110 v. 396.

SEC. 7558-10. **[Proposed contract; plans and specifications; probable damages; shall be on file before passage of resolution.]** At the time of passing said resolution determining to proceed with said construction, the proposed contract between said county and said company or companies, for the construction, use and maintenance of the joint bridge, together with the plans and specifications of the joint bridge showing its location, elevation and approaches, and such other information as may be required under the provisions of said contract, shall be prepared and on file with said commissioners, which plans, specifications and contract shall be approved and the execution of said contract by the officers of such county shall be authorized by said resolution determining to proceed. The said resolution shall also contain a statement of the damages claimed or likely to accrue by reason of said joint bridge construction and also who shall supervise the work of construction.

HISTORY: — 110 v. 396.

SEC. 7558-11. **[Resolution to contain general description of land required; damages.]** Said resolution determining to proceed with said construction shall also contain a general description of the land or property required, if any, by said county, for approaches to said bridge, or for making the alterations in any highway shown on said plan or required by said specifications or contract, or necessary to be purchased or appropriated by the county, and any land required for establishing, altering, widening or changing the location or grade of any highway, or slope rights for any highway or approaches, required by the terms of said contract.

All claims for damages by reason of said joint bridge construction as herein provided, shall be assessed and determined as in other cases of public improvements where like claims are made, before the beginning or after the completion of the proposed improvement, as shall be determined by said commissioners in the resolution determining to proceed with said improvement.

HISTORY: — 110 v. 396.

SEC. 7558-12. **[Dedication of highway.]** After the resolution determining to proceed has gone into effect and said county, and said company or companies have executed the contract approved by said resolution providing for the construction, use and maintenance of such joint bridge, said company or companies shall dedicate for public use a highway of such width or widths and at such elevation as shall be fixed and determined in said contract. Said dedication shall be by plat prepared,

signed, acknowledged and recorded in the same manner and form as that prescribed for the dedication of other public highways, and commissioners of any county shall have the right to accept such dedication.

HISTORY: — 110 v. 397.

SEC. 7558-13. **[Proceedings to be the same as in other county roads.]** In the establishment of any highway or in the making of any change in the location of any highway as shown on said plan or required by said contract, or any relocation of any highway or vacation of the whole or any part of the same by the county commissioners, the same proceeding shall be had by them as is provided by law for the establishment, change of location, relocation, widening, vacation, or establishing or re-establishing a grade for the same as in the case of county roads within the jurisdiction of said county commissioners.

HISTORY: — 110 v. 397.

SEC. 7558-14. **[Lands to be purchased or appropriated.]** The land or property required to make the alteration in the street or highway necessitated by the proposed improvement, and as shown on said plan, specifications and contract, shall be purchased or appropriated by the county in the manner provided by law for the appropriation of private property for public use, and any land or property required to make any alteration in the railroad or railroads necessitated by the proposed improvement shall be purchased or appropriated by the railroad company or companies in the manner provided for the appropriation of private property by such corporation.

HISTORY: — 110 v. 397.

SEC. 7558-15. **[County may issue bonds; tax levy for repair.]** For the purpose of raising money to pay its proportion of the cost of such improvements as fixed or provided in said contract, the county may issue its bonds to the necessary amount, under the provisions and limitations of the law with respect to the submission to the voters of the county of the question of issuing bonds for the construction of county bridges, which bonds shall be of such denomination and payable at such places and times as the commissioners determine, and bear interest not exceeding six per cent per annum, but not be sold for less than their par value; and a tax on the taxable property of the county not exceeding one-half mill in each year may be levied to pay the principal and interest of such bonds as they mature, or such cost may be paid from the proceeds of any bond issue or issues heretofore or hereafter authorized for the building of a bridge having the same or approximately the same termini, or connecting the same county roads as those provided in said contract for such joint bridge.

After the improvement is completed, a tax may be levied by the

county to pay the cost of maintaining and keeping in repair that part of the joint bridge required to be maintained and kept in repair by the county; and the repairing or rebuilding or replacement thereof, in the event of its becoming dangerous and being condemned for public travel, shall be governed by the provisions of sections 5643 and 5644 of the General Code.

HISTORY: — 110 v. 397.

SEC. 7558-16. **[Publication in newspaper.]** All resolutions, and notices provided for herein shall be published, in one newspaper printed and of general circulation in said county, and such publication shall be complete when published once a week, on the same day of the week, for two consecutive weeks.

HISTORY: — 110 v. 398.

SEC. 7558-17. **[Majority action of commissioners required.]** All resolutions herein required to be passed or adopted by a county, or to carry out the provisions of said contract, shall be passed or adopted by a majority of all members elected or appointed to the board of commissioners of such county.

HISTORY: — 110 v. 398.

SEC. 7558-18. **[Rights, title, etc.]** Nothing herein contained shall authorize such county in the passage of any resolution, or the approval of any plans or specifications, or the execution of any contract, or the acceptance of any dedication, on account of the construction, use or maintenance of any joint bridge, to acquire any other right, title or interest in or to the lands or rights of any of said company or companies than such rights as shall be expressly granted in said contract, and shown upon said dedication plat.

HISTORY: — 110 v. 398.

SEC. 7559. (No change since 1922 edition).

SEC. 7560. (No change since 1922 edition).

SEC. 7561. (No change since 1922 edition).

SEC. 7563. (No change since 1922 edition.)

A board of county commissioners constructed a highway 24 feet in width, with a 14-foot paved brick road in the center. At the bottom of the embankment it inserted a 12-inch corrugated pipe, 44 feet in length; this pipe was 13 feet below the surface level of the traveled highway and the ends thereof 10 feet distant therefrom. Held, such pipe was not a culvert within the meaning of Section 7568, General Code, and the board is not liable for failure to erect and maintain guard rails at a point on the highway above such pipe, or on the side of an approach thereto.

Riley v. McNicol — 109 O. S. 29.

The words "wash bank" in Section 7563, General Code, mean a bank composed of such substance that it is liable to be washed away by the action of the water thereon, so as to become unsafe to travelers on such highway.

The county commissioners are not required under Section 7563, General Code, to protect by guard rails banks immediately connected with or adjacent to a public highway unless they have a perpendicular drop of more than eight feet from the surface of the highway and are composed of such substance that they may be washed away by the action of water thereon so as to be unsafe for travel on such highway.

Kerr, Admr., v. Bougher et al., 16 Ohio App. 434.

The prinicpal purpose of requiring guard rails to be erected at the ends of certain county bridges and on each side of the approaches thereto, as required by Section 7563 is to warn drivers of the location of danger.

The duty enjoined on county commissioners by the provisions of such sections was not relieved by the passage of State Highway law (105-106 O. L., p. 623-666) or any later amendment thereof.

Harrigan, Admr., v. Board of County Commissioners, 31 O. C. A. 449.

SECS. 7564 to 7571. (No change since 1922 edition).

SEC. 7572. (No change since 1922 edition.)

After the commissioners and surveyors of a county have ascertained the carrying capacity of a county bridge upon an improved highway of their county, and given the warning and notice required by Section 7572, General Code, any person driving thereon a loaded conveyance of greater weight than the carrying capacity of such bridge is subject to the fine and liability provided in that section.

The county commissioners cannot be enjoined from causing the arrest and conviction of persons driving over a county bridge on an improved highway in their county with a loaded conveyance of greater weight than the carrying capacity of such bridge, as ascertained under the provisions of Section 7572, General Code, although its carrying capacity is less than the weight allowed to be propelled over the improved highways and bridges thereon by Section 7246, General Code.

Section 7250, General Code, does not prohibit the commissioner of a county from ascertaining the carrying capacity of the bridges on the improved highway of the county under Section 7572, and limiting weight of the load that can be transported over such bridges to the carrying capacity thereof, although such capacity be less than the weight allowed by Sections 7246 and 7249, inclusive, General Code.

Buehrle v. Commissioners, 14 Ohio App. 334.

SEC. 7573. (No change since 1922 edition.)

SEC. 7574. (No change since 1922 edition.)

CHAPTER X

Railway Crossings

SEC. 6956-22. **[Power to raise or lower road grade above or below railroad tracks.]** Any county may raise or lower, or cause to be raised or lowered the grade of any main market road or inter-county highway above or below the tracks of railroads, or railroads and parallel and adjacent interurban railroads within such county, and may require any railroad company operating a railroad in such county, and any interurban railroad company operating an interurban railroad parallel and adjacent to said railroad, to raise or lower the grade of its tracks, above or below any main market road or intercounty highway, and may construct ways or crossings for such road or highway above the tracks of any railroad or railroads and parallel and adjacent interurban railroad, or require the railroad company and any interurban railroad company operating an interurban railroad parallel and adjacent to said railroad to construct ways or crossings therefor that are to be passed under its tracks, may require such railroad company and any interurban railroad company operating an interurban railroad parallel and adjacent to said railroad to erect permanent piers, abutments or any other appropriate supports for any of the above works in main market roads and inter-county highways within the county, whenever in the opinion of the board of county commissioners, the raising or lowering of the grade of any such railroad or railroads and parallel and adjacent interurban railroad tracks or the raising or lowering or construction of such roads or highways or supports may be necessary; upon the terms and conditions hereinafter set forth in this act.

HISTORY: — 110 v. 231.

It is believed that there is no conflict between the provisions of the act of April 6, 1923, and Section 8863 of the General Code. It will be noted that said Section 8863 provides for the separation of grades on public roads and highways, while Section 6956-22, and related sections, pertains only to those classes of roads making up the state system. The term "roads" and "highways" are used in their generic sense and include all kinds of public ways, those of the state system as well as others.

It will be further noted that the proceedings found in said Section 8863, and related sections, are entirely dependent upon an agreement between the county commissioners and the railroad company, while said Section 6956-22, and related sections, provides a proceeding whereby the railroad company may be compelled to participate in the proposed improvement.

This conclusion is further strengthened and relieved of doubt when it is noted that in the act of April 6, 1923, Section 8869 of the General Code, which is one of

the sections under the sub-title of "Grade Crossings", was amended, and which, among other things, provides that:

> "when the public way crosses a railroad or railroads, * * *, by an overhead bridge, the cost of maintenance must be borne by the county, or by the State of Ohio as may be provided by law."

These statutory provisions are clearly not in conflict, and it would follow that in answer to your first inquiry, and you are so advised, that county commissioners are authorized to construct, in co-operation with a railroad company, a grade separation project, at a grade crossing on an inter-county highway under the provisions of Section 8863, General Code, and related sections.

In passing it is deemed pertinent to call your attention to the provisions of Section 1203 of the General Code, under the provisions of which the county commissioners are required to submit the plans and specifications for the proposed improvement to the director of highways and public works for his approval.

Your second question is whether or not the county can issue bonds and levy a tax to pay its share of the cost, under Section 8870, General Code.

The same reasoning by which we arrive, in answer to the first question, at the conclusion that sections 8863, et seq., are not repealed by implication by the enactment of section 6956-22, General Code, applies equally as well to section 8870, General Code; and as section 8870 specifically provides for the county issuing bonds to the necessary amount to pay its proportion of the cost of such improvement and further provides that a tax on the taxable property of the county, not exceeding one-half mill in each year, may be levied to pay the principal and interest of the bonds as they mature, it is my opinion that the county may issue bonds and levy a tax to pay its share of the cost of the improvement, under section 8870, General Code.

Op. Atty. Gen. No. 2434, May 4, 1925.

SEC. 6956-23. **[Change of location of main market roads.]** When the board of county commissioners deems it necessary in the abolishment of such grade crossings, to change the location of any main market road or inter-county highway in such county, such board of commissioners may, with the approval of the director of highways and public works, relocate such road, or highway, or any part thereof, may vacate the whole or any portion of such road or highway, abandoned by such relocation, and cause the improvements above contemplated to be placed in such relocated road or highway.

HISTORY: — 110 v. 232.

SEC. 6956-24. **[Hearing by director of highways.]** As a condition precedent to the exercise of jurisdiction under the terms of this act by a board of county commissioners, such commissioners shall transmit to the director of highways and public works a full written description of the grade crossing which it is proposed to abolish, showing its location. the reasons which tend to make necessary the elimination of the same, the names of the railroad or railroads or interurban railway or railways owning the tracks crossing said main market road or inter-county highway and the manner in which it is contemplated the improvement proposed should be accomplished. On receipt of such description the state

highway director shall conduct a hearing as to the necessity and the expediency of the proposed improvement after thirty days' notice in writing of the time and place of the holding of such hearing has been given to the county commissioners and to the railroad or interurban railway company or companies concerned in such proposed elimination, such notice to be served by the sheriff upon the railroad or interurban railroad company, or companies, in the manner provided for by law for the service of summons in civil actions and if, after such hearing, the state highway director is of the opinion that such improvement is reasonably necessary and expedient, he shall so certify in writing to said county commissioners, sending a copy of such certificate to all railroad or interurban railway companies involved. But if said director is not of such opinion he shall so state in his certificate, and thereupon no further proceedings shall be taken upon said application to said director.

HISTORY: — 110 v. 282.

SEC. 6956-25. **[Public hearing. Notice. Railroad shall submit plans.]** The board of county commissioners desiring to proceed under the provisions of this act shall, after receipt of the certificate of necessity and expediency from the director of highways and public works herein provided for, hold a public hearing as to the expediency of constructing such improvement, notice of which shall be given by publication in two English newspapers published and of general circulation in such county, if such there be, otherwise in two newspapers of general circulation in such county, for two weeks before the date set for such hearing, and served upon the railroad or interurban railway company or companies in the manner provided by law for the service of summons in civil actions, not less than twenty days prior to the date of such hearing.

The board of county commissioners of such county after such public hearing and for the purpose of making or causing such an improvement to be made, may by resolution adopted by unanimous vote, require the railroad company, in co-operation with the county surveyor or any engineer designated by the board of county commissioners, to prepare and submit to such board of county commissioners within six months, unless longer time is mutually agreed upon in writing, plans and specifications for such improvements, specifying the number, character and location of all piers and supports which are to be permanently placed in any road or highway, specifying the grades to be established for the roads and the height, character and estimated cost of any viaduct or way above or below any railroad track and the change of grade required to be made of such tracks, including side tracks and switches. But in changing the grade of any railroad, no grade shall be required in excess of the grade adopted by the railroad company for its construction work on that division or part of the railroad on which the improvement is to be made, without the consent of the railroad company, nor shall the railroad com-

pany's tracks be required to be placed below high-water mark. Such resolution shall be published in the manner provided by law as to resolutions of a city council declaring the necessity of a contemplated public improvement, and shall be served by the sheriff upon the railroad or interurban railroad company or companies in the manner provided by law for the service of summons in civil actions; and if the proposed public improvement is to be made within a village or city, notice of the passage of the same shall be served upon the village or city by delivering to the clerk of the village or city council a true copy thereof.

If, at the expiration of six months from the passage of such resolution, the railroad company has refused or failed to co-operate in the preparation of such plans and specifications, or if the county surveyor or engineer designated by the county commisisoners and the railroad company fail to agree upon the plans and specifications of such improvement, then either the railroad company or the county may submit the matter of determining the method by which the improvement shall be made to the court of common pleas of such county. Either the county or company after the expiration of six months from the passage of the resolution may apply to such court of common pleas by petition accompanied by the necessary plans prepared by the county or railroad company covering the grade crossing proposed to be abolished. Such plans must show the grades to be established for such roads or highways, the changes to be made in the location of roads or highways; the height, character and estimated cost of any viaduct or way above or below the railroad tracks, and the number, character and location of piers, abutments or supports to be permanently located in the roads or highways, and the change of grade to be made in any railroad tracks, including sidetracks and switches.

HISTORY: — 110 v. 233.

SEC. 6956-26. **[Petition.]** Upon the filing of such petition, accompanied by plans, the railroad company or county opposed to the prayer thereof, or directly interested therein, shall have the right, within sixty days thereafter to file an answer to such petition and to present other plans for the abolition of such crossing or crossings. After the expiration of such period of sixty days the court shall proceed to a hearing upon the petition and any answers that have been filed,, which hearing must be advanced upon the docket upon motion of either party. After examination of all plans presented to it and after hearing the evidence, the court shall make a finding as to whether such plans or any of them are reasonable and practicable.

HISTORY: — 110 v. 234.

SEC. 6956-27. **[Finding of court. Apportionment between railroads.]** If the court finds that the plans presented by the petitioner or any of the parties answering thereto are reasonable and practicable, it

shall order the changes to be made in accordance with the most reasonable and practicable plan presented to the court or as amended by its order entered by consent of the parties. The county shall be required to make such changes in the roads or highways as may be necessary, and the railroad company or companies be required to make the changes necessary in the tracks and roadbed, in order to comply with the rulings of the court. If more than one railroad company, or a railroad company and an interurban railway company, or railroad companies and interurban railway companies, own tracks on the crossing in question, the court shall apportion between or among them the fifty per cent. hereinafter provided to be paid by the railroad companies, or the railroad and interurban railroad companies, and when making such apportionment the courts shall take into consideration the difference in costs of construction and benefits derived as between such railroad or railroads and interurban railroad company or companies. But if the court finds that none of the plans are reasonable or practicable, the improvement shall not be made upon such plans.

Either party feeling aggrieved by the decision and order of the court may appeal or prosecute error as in other cases, the hearing of which shall be advanced upon the docket upon motion of either party.

If the county or railroad company refuses or neglects to comply with the orders or findings made by the court under the provisions hereof, the court may enforce its orders or findings by either mandamus or mandatory injunction or for contempt of court, as the necessity of the case may require, upon the application of either party to such proceedings.

HISTORY: — 110 v. 234.

SEC. 6956-28. **[Apportionment of cost between county and railroad.]** The cost of constructing the improvement authorized, including the making of ways, crossings or viaducts, above or below the railroad tracks, and the raising or lowering of the grades of the railroad tracks and side tracks for such distance as may be required by such county and made necessary by such improvement, including the cost of moving or changing existing structures and other incidental expenses, together with the cost of land or property purchased or appropriated, and damages to owners of abutting property, or other property, shall be borne, unless otherwise agreed upon, fifty per cent by the county and fifty per cent by such railroad company or companies, including any interurban railroad company or companies, the crossing of whose tracks with said highway is involved. The county shall have a right of action against any such railroad company for the recovery of the fifty per cent of such costs payable by it, interest from the time they become due. Such county and railroad company may agree as to what part of the work shall be done by the railroad company, and also fix the amount to be allowed or credited to the company for doing the work. Such railroad

company shall be entitled to deduct from its fifty per cent of the cost of the improvement the expense incurred by it in the change of its grade required by the county or made necessary by it under such specifications, but only in case the amount of the expense has been agreed upon in writing between the county and the railroad company. If the amount of work done by the company, or made necessary by reason of such change of grade on lowering or raising its tracks, exceeds fifty per cent of the cost of the improvement, then it shall have the right to recover the amount with interest in excess of fifty per cent of the expenses, in an action at law against the county.

In connection with any such improvement the board of county commisisoners of any county, or the director of highways and public works, and the railroad company or companies, including any interurban railroad company or companies whose tracks are to be raised or lowered, or over or under whose tracks the proposed improvement is to pass, may agree as to the portions of such construction, the cost of which is to be shared, and upon the percentages of the cost to be borne by the county or state, and by the railroad company or companies, or interurban railroad company or companies, but if no such agreement is made the provisions of this section shall apply.

HISTORY: — 110 v. 235.

SEC. 6956-29. **[Notice of change of grade to abutting owners.]** Before any work shall be done which may be required in the making of such proposed improvement, the board of county commissioners of such county shall, by resolution require notice of its intention to make such improvement in accordance with the plans and specifications, agreed upon or ordered to be given to the owner of each piece of property abutting on any road, the grade of which will be changed by the proposed improvement.

HISTORY: — 110 v. 236.

SEC. 6956-30. **[Service of summons and publication; damages.]** Notice of the passage of such resolution shall be served by the sheriff of the county upon the owner of each piece of such property which will be affected by any change of grade, in the manner provided by law for the service of summons in civil actions. If any of such owners are non-residents of the county, or if it appears from the return that they can not be found, the notice shall be published for at least two weeks in an English language newspaper published in said county. And such notice shall be completed at least twenty days before any work is done on said improvement; and the sheriff's return shall be prima facie evidence of the facts recited therein.

The filing of claims for damages, and the effect of failure to file such claims, found in General Code, section 3823, shall apply to the no-

tice herein provided, and to all claims for damages by reason of such proposed improvement. But such claims shall be filed with the county auditor within the time, and rights thereunder shall pass to vendees, as in said section provided. After the expiration of the time provided for the filing of such claims, the board of county commissioners of such county, when claims have been filed within the time limited, shall determine by resolution whether such claims are to be judicially inquired into, or hereinafter provided, before commencing or after the completion of the proposed improvement. Thereupon, the county prosecutor shall make application for a jury, in the manner provided by law, to the common pleas, or probate court of the county, either before commencing or after the completion of the improvement, as the board of county commissioners determine, and all proceedings upon such application shall be governed by the laws relating to similar applications provided for in cases of city improvements so far as applicable.

HISTORY: — 110 v. 236.

SEC. 6956-31. **[Payment.]** The board of county commissioners may, by resolution, prescribe the manner and time or times of payment by such railroad company or companies of the proportion of the cost of such improvement which the railroad company or companies shall be required to pay.

HISTORY: — 110 v. 236.

SEC. 6956-32. **[Height of crossing above grade.]** Any way, crossing or viaduct so constructed over a railroad track or tracks shall be of such height as not to be of less than twenty-one feet in the clear from the top surface of the rails in the railroad track to the lowest point of projection of such overhead way, crossing or viaduct, unless such company consents to, or the court orders a less height. But in no event shall such court order a less height than sixteen feet and three inches.

HISTORY: — 110 v. 237.

SEC. 6956-33. **[Appropriation of property.]** The land or property required to make alterations in the road, or other way or any right, title or interest in a road or other way, required for the erection of piers or supports necessitated by the proposed improvement, shall be purchased or appropriated by the county or company after the manner provided by law for the appropriation of private property for public use. The land or property required to make any alteration in the railroad or railroads necessitated by the proposed improvements, shall be purchased or appropriated by the railroad company or companies after the manner provided for the appropriation of private property by such corporation. But the county shall not appropriate land held or owned by a railroad com-

pany and necessary for the use of the company in maintaining and operating its road.

HISTORY: — 110 v. 237.

SEC. 6956-34. **[Repairs.]** After the completion of the work, the crossings and approaches shall be kept in repair as follows: When the public way crosses a railroad, or railroads, or railroad or railroads and interurban railroad or interurban railroads, by an overhead bridge, the cost of maintenance must be borne by the county, or by the state, as may be provided by law. When the public way passes under a railroad or railroads, or railroad or railroads and interurban railroad or interurban railroads, the bridge and its abutments shall be kept and maintained by the railroad company or companies or the railroad company or companies and interurban railroad company or companies, as the case may be, in such proportions as shall be fixed by agreement between the parties, or, in the absence of such agreement, in such proportions as may be fixed by the common pleas court of the county in which the improvement is located, and the public way and its approaches shall be maintained and kept in repair by the county in which they are situated, or by the state of Ohio as may be provided by law.

HISTORY: — 110 v. 237.

SEC. 6956-35. **[Townships, villages. Tax levies. Bonds.]** The trustees of any township and the council of any village or city in which such proposed improvement is to be made may assume and agree to pay to the county on behalf of the village or city such portion of the costs of such improvement assumed by the county as the trustees or council deem reasonable.

For the purpose of raising the money to pay the proportion of the cost of such improvement payable by the county, the bonds of the county may be issued to the necessary amount, and for the proportion determined by the council or trustees to be assumed by the municipality or township, the bonds of such municipality or township may be issued to the necessary amount. They shall be of such denomination and payable at such place and times as the commissioners, trustees or council respectively determine, and bear interest not exceeding six per cent per annum, but shall not be sold for less than their par value.

After completion of the improvement, a tax may be levied by the county to pay the costs of maintaining and keeping in repair that part of the work required to be maintained and kept in repair by the county.

The bond issues and tax levies herein authorized shall be subject to the limitation prescribed by law for bond issues and tax levies for the purpose of paying the county's, township's and municipality's share of the cost of a road improvement carried forward by the state.

HISTORY: — 110 v. 237.

SEC. 6956-36. **[Crossings of main market roads, etc. Time of payment.]** In case the track or tracks of any street railway company or companies, or interurban railroad company or companies cross, in a main market road or inter-county highway, the right of way of any railroad company or companies at a point where, under the plans and specifications above provided for, it has been determined to construct such improvements, the county commissioners by resolution may require such street railway or interurban railroad company or companies, to bear a reasonable portion of the cost assumed by the county in making the improvement, not exceeding twenty-five per cent. of the portion payable by the county; and it shall have a right of action against such street railway or interurban railroad company or companies, for that part of the cost which the resolution requires it or them to bear. Such part of the cost also shall be a lien upon all the property, real and personal, of such company or companies situated in such county from and after the date of the passage of such resolution.

The county commissioners may by resolution provide the mode and time or times of payment for the proportion of the cost of such improvement to be borne by such street railway or interurban railroad company or companies.

Such street railway or interurban railroad company or companies shall keep in repair at its or their own expense all its tracks affected by such improvement and shall bear a reasonable proportion of the cost of maintaining, renewing and repairing all construction work of whatever character, necessary to support such tracks.

The word "company" wherever used in this act is intended to include also the words "company or companies" and the words "railroad" or "interurban railroad" whenever used in this act are intended to include also the words "railroads" or "interurban railroads."

HISTORY: — 110 v. 238.

SEC. 6956-37. **[Grade of main market roads; hearing; appeal.]** The director of highways and public works of the state of Ohio shall have the same power and authority to raise or lower or cause to be raised or lowered, the grade of any main market road or inter-county highway above or below railroad tracks within any county in the state herein conferred upon the county commissioners and may in like manner require any railroad company operating a railroad in any county to raise or lower the grade of its tracks and may construct ways or crossings above the tracks of any railroad or require the railroad company to construct ways or crossings that are to be passed under its tracks, but only after proper hearing as provided for in section 3 and section 17 hereof has been held by said director, and, in event of an appeal from the finding of said director as provided for in section 18 hereof, after the question of the necessity and expediency of said proposed elimination

of grade crossing has been fully decided by the public utilities commission of Ohio, or the supreme court of Ohio as therein provided.

He may after such initial hearing, provided for in section 3 or section 17 hereof, or in case of appeal therefrom, after final decision by the public utilities commission, or the supreme court as provided for in section 18 of this act, require such railroad company to erect permanent piers, abutments or any other appropriate support in main market roads and inter-county highways within any county whenever in the opinion of the state highway director the raising or lowering of the grade of any such railroad tracks or the raising, lowering or construction of such roads, crossings or supports may be necessary. The director of highways and public works shall have the same power and authority and obligation with respect to all of the above enumerated matters as hereinbefore conferred or enjoined upon counties and county commissioners and shall be authorized to proceed with respect to all of such improvements in the manner herein provided with respect to counties and county commissioners, so far as such provisions are applicable.

HISTORY: — 110 v. 238.

SEC. 6956-38. **[Notice, proceedings; payment.]** When said director desires to proceed under this section he shall enter upon his appropriate public record an order to that effect, which shall describe the grade crossing to be eliminated, give its location, the reasons for such elimination, the manner in which it is proposed to be accomplished, and a description of the proposed improvement to be substituted therefor. In said order said director shall fix a time and place for a hearing to be conducted by him as to the necessity and expediency of said proposed improvement.

He shall thereupon cause at least thirty days' notice of such order and hearing to be served upon the board of county commissioners of the county wherein said crossing is located, and the railroad or interurban railway companies whose tracks occupy the same, by causing copies of said order to be served upon them either by some persons designated by him or by registered letter. And the return of such person or the registry receipt for such letter shall be prima facie evidence of the truth of the statements therein contained.

The director, shall, on the day so fixed or to which the hearing may be adjourned, proceed to hear and determine said matter and shall thereupon proceed as provided in section 3 hereof.

And in his further proceedings in and about such improvement said director shall evidence his conclusions and intentions by order duly entered upon his record, of which copies shall forthwith be furnished to the commissioners, railroad companies or others directly affected by said proposed improvement, and in the case of notice of intention to proceed with the work in accordance with the plans and specifications agreed upon

or ordered, shall be served upon property owners as provided by section 9 hereof.

The director shall assume on behalf of the state all of the obligations both with respect to the payment of a portion of the cost of any such improvements and otherwise as is herein provided with respect to counties. Any proportion of the cost of any such improvements assumed by the director on behalf of the state shall be paid from the inter-county highway or main market road funds of the department of highways and public works. In the event the director proceeds under the provisions of this act he shall be authorized to enter into agreements with the county commissioners of the county or trustees of the township or both, within which such improvement is located and also with the council of any municipal corporation within which such improvement is located, providing for the payment to the state by such county or township or municipal corporation of such proportion of the total cost assumed by the state as may be agreed upon between the director and the county commissioners, township trustees or municipal council.

Such commissioner, trustee or council shall have the same power to issue bonds or levy taxes for the purpose of providing any share of the cost of any such improvement assumed by them as is herein given with respect to improvement initiated by counties.

HISTORY: — 110 v. 239.

SEC. 6956-39. **[Appeal from order of director or board of commissioners.]** From the finding and order of the director of highways and public works that such improvement is reasonably necessary and expedient, the county commmissioners or any railroad or interurban railway company may, upon the question of such necessity and expediency, take an appeal to the public utilities commission of Ohio. A party desiring to take such an appeal shall file with said director written notice of its intention so to do within thirty days after service upon it of said finding and order. Said director shall thereupon certify to such commission all original papers on file with him, together with a copy of all orders, made by him in said proceeding. Said appeal shall be docketed by said commission, and after reasonable notice to all interested parties said commission shall hear the same upon the evidence adduced before it, and shall thereupon determine and decide whether the making of said proposed improvement is necessary and expedient. An appeal from the order of said director or a board of county commissioners fixing the contribution of a street railway or interurban railroad company, under section 15 of this act, to said public utilities commission may be taken and shall be heard and decided in the same manner. And any party to such proceedings on appeal, and being aggrieved by the decision of the commission thereon, may prosecute error to the supreme court as in other cases.

HISTORY: — 110 v. 240.

SEC. 8763. (No change since 1922 edition).

An abutting owner has a right to enjoy the use of the street in front of his property in any way that does not interfere with the free use of the streets as a public way. This includes the right to use the street transversely for the purpose of loading and unloading vehicles so far as no unreasonable interference with travel results.

Where in an appropriation proceeding it is claimed that the owner of abutting property will be damaged by losing his right to use the street transversely for loading and unloading vehicles, a city ordinance is competent evidence to show how such transverse use is regulated by the city.

As the measure of damages in an appropriation is the difference in the value of the property with and without the improvement, it is improper to admit testimony tending to show the cost of tearing down valuable buildings and rebuilding them with the view of so making over the property that it might be used in the identical way it was used before the improvement.

Where a right to use a street for an overhead bridge for a railroad has been acquired by contract and later the railroad condemns a larger use of the street for the same purpose the owners are entitled to be compensated for any damages from dirt, noise, loss of light, etc., that will follow from such larger use.

The Cincinnati Southern Railway v. Cornelius J. McWilliams, et al. 23 O. L. R. 511. Decided, March 14, 1922

SEC. 8773. (No change since 1922 edition).

SEC. 8843. (No change since 1922 edition).

Where a railway company holds its right of way by virtue of an easement rather than a fee simple title, and the line runs between the highway and farm land, shutting off ingress and egress to the land, a private crossing over the railway track becomes a way of necessity, and interference by the company with maintenance of such a crossing by the land owner may be enjoined.

Cleming v. The Baltimore and Ohio R. R. Co., 22 O. L. R. 283 Decided December 27, 1923

SEC. 8863. (No change since 1922 edition).

Pursuant to the provisions of Section 8863, and related sections, of the General Code, county commissioners are authorized to enter into a contract with a railroad company, providing for the relocation and reconstruction of a separate grade crossing on an intercounty highway or main market road and without the limits of a municipality.

It is a condition precedent to the entering into of a valid contract for such purpose, that the county auditor first certify that the money required for the payment thereof is in the treasury to the credit of the fund from which it is to be drawn or has been levied and placed on the duplicate and in the process of collection and not appropriated for any other purpose, notwithstanding the provision of Section 8866, General Code, providing for the filing of such agreement in the common pleas court for entry upon its records and giving to such agreement so filed and entered the same force and effect as a decree of the court.

In the absence of a substantial compliance by the county auditor with the provisions of Section 5660 of the General Code, a railroad company may not recover as against the county the money to be paid by the county in accordance with the terms of such agreement, although the contract on the part of the railroad company has been fully performed.

Where a separated railroad and highway crossing has been relocated and reconstructed by a railroad company under the terms of such a contract, the railroad company may not close such relocated and reconstructed separated crossing and exclude the traveling public therefrom, notwithstanding the county has declined payment as provided in the terms of the contract under which such separated crossing has been relocated and reconstructed, on the ground that the contract is illegal and void for a lack of substantial compliance by the county auditor with the provisions of Section 5660 of the General Code.

Op. Atty. Gen. No. 2547, June 8, 1925.

See Opinions of Attorney General (1925) No. 2434, cited under Section 6956-22.

1. Where a railroad company, prior to the enactment of the grade crossing elimination statutes (Secs. 8863 et seq.) has erected bridges along a public road so as to constitute an overhead crossing for the public road it is the duty of the railroad company and not of the county to keep up all repairs of such bridges.

2. But by reason of Section 2408 G. C., the county, in order to afford a safe way for the public, may and should make repairs if the railroad fails to do so, and charge the cost to the railroad company.

3. Further, an action in mandatory injunction may perhaps be available to the county commissioners to compel the railroad company to make the necessary repairs.

Op. Atty. Gen. (1922), p. 1020.

Where a board of county commissioners adopts a resolution setting forth an alleged dangerous highway crossing under a railroad, and the alleged necessity of establishing another undercrossing, at some other point, the mere adoption of such a resolution does not create an obligation on the part of the railroad company to proceed to construct such new undercrossing, but there must first be an effort to reach an agreement between the railroad company and the county commissioners upon the location of such new undercrossing and the plans and specifications for same; and a petition which merely alleges the adoption of such a resolution and the existence of a dangerous situation, without alleging any effort to reach an agreement and without alleging a demand on the part of the commissioners or a refusal on the part of the railroad, does not state a cause of action under Section 6956-3, General Code.

Where a board of county commissioners has made an order for the alteration of a state highway pursuant to statutory proceedings and such alteration has in fact been made and such altered highway opened and used for approximately twenty-two years, a subsequent board of county commissioners may not declare the former order void, notwithstanding defects or irregularities in the proceedings wherein such former order was made.

Where such order has been made for the alteration of a state highway in the year 1897 and such altered highway opened for traffic, that portion of the original highway which was rendered unnecessary by the alteration automatically became vacated by the provisions of Section 4635, Revised Statutes, in force in 1897.

Where such alteration has been made and such road opened and used for a period of twenty-two years, a court of equity is without power upon the petition of a board of county commissioners to reopen and restore to use such abandoned portion of a state highway, but such vacated portion can only be re-established through appropriate proceedings and orders of the county commissioners.

Arbaugh v. B. & O. S. W. Rd. Co..—104 O. S. 110.

Decided Jan. 10, 1922.

Where county commisioners, as a part of the plan to eliminate grade crossings over steam railroads, established the grade of a road or highway and cut down the

surface thereof three or four feet in front of property which has been improved with reference to such surface grade, the owner of such real estate can recover damages from the county if any damage results from such change of grade and if same is found by the jury to be an unreasonable grade.

Where such unreasonable grade has been actually made by the county commissioners, the fact that such commissioners made no formal record of the order and proceedings establishing the same is not a defense on behalf of the county, nor does such fact relegate the property owner to an action exclusively against the county commissioners as individuals.

Lewis v. Douglas, 12 Ohio App. 386. Decided April 1, 1921.

See Grimell et al., v. Commissioners,, 6 C. C. (N. S.) 180.

SEC. 8869. **[Cost of maintenance of bridge to be borne by county or state.]** After the completion of the work, the crossings and approaches shall be kept in repair as follows: When the public way crosses a railroad or railroads, or railroad or railroads and interurban railroad or interurban railroads, by an overhead bridge, the cost of maintenance must be borne by the county, or by the state of Ohio as may be provided by law. When the public way passes under a railroad or railroads, or railroad or railroads and interurban railroad or interurban railroads, the bridge in its abutments shall be kept and maintained by the railroad company or companies, or the railroad company or companies and interurban railroad company or companies, as the case may be, in such proportions as may be fixed by agreement between the parties or, in the absence of such agreement, in such proportions as may be fixed by the common pleas court of the county in which the improvement is located, and the public way and its approaches shall be maintained and kept in repair by the county in which they are situated, or by the state of Ohio as may be provided by law.

HISTORY: — R. S. 3337-12; 99 v. 361; 110 v. 241.

SEC. 8874. (No change since 1922 edition).

A railroad company, while its property is in the exclusive possession, control, and management of the federal government, is not responsible for an injury suffered by a third person arising out of negligence in the maintenance, management or operation of the railroad property, even though the defect in roadbed or rolling stock, which produces the injury, existed when the property was taken over by the government.

Section 8874, General Code, authorizes a city to place piers in the street to support an overhead railroad bridge when effecting a separation of the grade of the street, and the grade of the steam railroad tracks which cross the street. Piers so placed in the street by order of the city council do not constitute a nuisance.

Where the safety and convenience of public travel upon any street necessitates such separation of grades, the railroad company and the city, acting in good faith and upon the advice of competent civil engineers, may determine the character of the bridge or structure to carry the elevated railroad tracks. And when the structure, completed according to the plans and specifications agreed upon and adopted by the City and the railroad company, leaves ample clear space for all public travel upon the street, it is error for a trial court, in an action brought by one who has suffered an injury on the street thus spanned by an overhead bridge,

to charge the jury that the question whether the piers in the street constitute a nuisance is one for the jury to decide.

City of Elyria v. Meacham et al. 113 O. S.. Decided June 2, 1925.

SEC. 8898. (No change since 1922 edition).

SEC. 9180. (No change since 1922 edition).

A public utility maintaining poles and wires in the streets of a village, under a franchise authorizing the erection of poles in the streets and alleys for the purpose of carrying electricity to furnish street and residential lighting, will not be compelled, by mandatory injunction, to remove poles in front of an abutting property owner's premises where the poles carry wires furnishing current for street and residential lighting, although such poles also carry wires for another purpose, where such other purpose does not impair the abutting owners property to any appreciable extent, it being conceded that the poles and wires do not interfere with abutting owner's light, air, ingress or egress, or extend over that portion of his property not dedicated to sidewalk uses.

Walton v. C., B. & B. Trac. Co., 17 Ohio App. 34. Decided December 4, 1922.

In this state the fee to the country highway is in the abutting owner, and the public has only the right of improvement thereof and uninterrupted travel thereover.

An owner of land abutting upon a country highway, whose title extends to the center of the road along the side of which are located shade trees, has a property right in such trees, and the same may not be interfered with, unless by consent of such owner or first making compensation according to law. Daily v. State, 51 Ohio St., 348, 37 N. E., 710, 24 L. R. A., 724, 46 Am. St. Rep., 578, followed and approved.

The erection and maintenance of telephone poles and wires within the limits of a country highway is an additional burden upon the easement and an invasion of the property rights of the abutting owner, for which he is entitled to compensation.

Where along a rural highway a telephone company has erected poles, done necessary cutting and trimming of a shade tree to permit the placing of telephone cables on said poles, such construction, however, not interfering with the access, light and air of the adjoining owner, but being without the consent and against the protest of such owner, an injunction will be granted at his instance restraining the further construction of such telephone line and requiring the removal of the poles and cables already in place, unless compensation shall be made to such owner or his consent obtained.

Ohio Bell Telephone Co. v. The Watson Co., 1120 O. S. 385. Decided April 21, 1925.

SEC. 9191. (No change since 1922 edition).

CHAPTER XI

Motor Trucks and Tractors

SEC. 7246. **[Maximum load permitted on public highway or street.]** No traction engine or steam roller weighing in excess of twelve tons, or no trailer, semi-trailer, wagon, truck, automobile truck, commercial tractor, or other vehicle, whether propelled by muscular or motor power, weighing in excess of ten tons, including weight of vehicle and load, shall be operated over and upon the improved public streets, inter-county highways, main market roads, bridges or culverts within the state, except as provided in this chapter. This provision shall not apply to vehicles run upon rails or tracks or to fire engines, fire trucks or other vehicles or apparatus belonging to any municipal or volunteer fire department or used by such department in the discharge of its functions. No object shall be moved over or upon such streets, highways, bridges or culverts upon wheels, rollers or otherwise, except as provided in this chapter, in excess of a total weight of twelve tons, including weight of vehicle, object or contrivance, and load.

HISTORY: — 106 v. 650; 107 v. 139; 110 v. 319; 111 v. 243.

County commissioners may in their discretion under authority of section 2419 G. C., purchase weighing jacks for use in the enforcement of the provisions of section 7246 G. C. relating to weights of vehicle and load upon the public highways.

Op. Atty. Gen. (1922), p. 396.

Under Section 7246, General Code, a trailer is a separate vehicle, which is not driven or propelled by its own power, but which is drawn by some independent power; and a semi-trailer is a separate vehicle which is not driven or propelled by its own power, but which to be useful, must be attached to and become a part of another vehicle, and then loses its identity as a separate vehicle.

When a semi-trailer is thus attached to a tractor truck the two become one power-vehicle or contrivance with six wheels, limited by law for certain purposes to a weight of ten tons, including the load.

Leaman v. State, 17 Ohio App. 323.

See 14 Ohio App. 334, cited under Sec. 7572.

SEC. 7247. **[Permission required when weight in excess of twelve tons.]** The county surveyor of any county, upon application in writing by the owner or person having charge thereof, may grant permission for the moving of vehicles, objects or structures in excess of a total weight of twelve tons, including weight of vehicle, object or contrivance, structure and load, over the improved inter-county highways, main market roads, bridges or culverts, within such county and located outside of any municipal corporation or corporations therein situated.

Such permission shall be in writing and the county surveyor may grant the same, subject to such conditions and restrictions as in his judgment are necessary for the preservation and protection, of such highways bridges and culverts. The director of public service of a city or mayor of a village may in like manner grant such permission as to the improved public highways, streets, bridges or culverts within such city or village.

The director of the department of highways and public works may in like manner grant such permission as to the improved public highways, streets, bridges or culverts within this state in regard to all inter-county movements of such vehicles, objects or structures, or in regard to any such movement wholly upon any portion of the inter-county highways, bridges or culverts.

HISTORY: — 107 v. 140; 111 v. 244.

Authority given county surveyors, etc., under section 7247, is to be exercised in special cases only when the object to be moved is not divisible into loads so as to comply with section 7246 G. C.

Op. Atty. Gen. (1924), p. 405.

SEC. 7248. **[Weight of load on highways and bridges and width of tire prescribed.]** No person, firm or corporation shall transport over the improved public streets, alleys, inter-county highways, main market roads, bridges or culverts in any vehicle propelled by either muscular, motor or other power, any burden, including weight of vehicle and load, greater than the following:

In vehicles having metal tires three inches or less in width a load of five hundred pounds for each inch of the total width of tire on all wheels. When the tires on such vehicles exceed three inches in width an additional load of eight hundred pounds shall be permitted for each inch by which the total width of the tires on all wheels exceeds twelve inches.

In vehicles having tires of rubber or other similar substances, for each inch of the total width of tires on all wheels, as follows: For tires three inches in width, a load of four hundred and fifty pounds; for tires three and one-half inches in width, a load of four hundred and fifty pounds; for tires four inches in width, a load of five hundred pounds; for tires five inches in width, a load of six hundred pounds; and, for tires six inches and over in width, a load of six hundred and fifty pounds. The total width of tires on all wheels shall be, in case of solid tires of rubber or other similar substance, the actual width in inches of all such tires between the flanges at the base of the tires, but in no event shall that portion of the tire coming in contact with the road surface be less than two-thirds of the width so measured between the flanges. And in the case of pneumatic tires of rubber or other similar substances, the total width of all tires on all wheels shall be the actual width of all such

tires measured at the widest portion thereof when inflated and not bearing a load.

In no event shall the load, including the proportionate weight of vehicle that can be concentrated on any wheel, exceed six hundred and fifty pounds to each inch in width of the tread as defined above for solid tires; or each inch in the actual diameter of pneumatic tires measured when inflated and not bearing a load.

HISTORY: — 107 v. 140; 108 v. Pt. II, 1241; 110 v. 320; 111 v. 244.

Under section 7248 of the General Code it is unlawful for any person, firm or corporation to transport, over the improved public streets, alleys, highways, bridges or culverts within this state, in any vehicle, equipped with tires of solid rubber or other similar substance propelled by muscular, motor or other power, any burden whatever, unless the width of that portion coming in contact with the road surface be at least two-thirds the width of the tire between the flanges at the base of the tire.

Op. Atty. Gen. (1923), p. 650.

SEC. 7248-1. **[Maximum weight on both wheels of one axle, etc.]** No vehicle shall be operated upon the improved inter-county highways, main market roads, streets, bridges or culverts within this state, having a gross weight, including load, greater than sixteen thousand pounds on both wheels of one axle, or no vehicle having more than eighty per cent of the permissive gross weight of vehicle and load concentrated on both wheels of one axle, or equipped with solid rubber tires of a thickness averaging less than the following: For three, three and one-half, four and five inch tires, seven-eighths inch; for six, seven and eight inch tires, one inch; and for ten, twelve and fourteen inch tires, one and one-eighth inch. Thickness of solid rubber tires as used herein shall be the average thickness of rubber measured from the top of the flanges of the tire channel.

HISTORY: — 110 v. 320; 111 v. 245.

The provisions of section 7248-1 G. C. (109 O. L. 546-548) placing a limitation upon the percentage of gross weight of vehicle and load that may be carried upon one axle of motor trucks driven upon the public highways are independent of the limitations placed upon maximum weight of vehicle and load by sections 7246 and 7247 G. C., and independent of the limitations prescribed by section 7248, based upon tire width; and the provisions of said section 7248-1 are to be applied to all motor trucks without reference to such maximum weight or tire width.

Op. Atty. Gen. (1922), p. 486.

SEC. 7248-2. **[Maximum width, height and length.]** No vehicle shall be operated upon the inter-county highways or main market roads, whose width is greater than ninety-six inches, except traction engines, whose width shall not exceed one hundred and thirty-two inches, and no vehicle shall be operated on such highways, of a greater height than twelve feet six inches, or of a greater length than thirty feet, and no combina-

tion of vehicles coupled together shall be so operated whose total length, including load, shall be greater than eighty-five feet, provided, that in special cases vehicles whose dimentions exceed the foreging may operate under a written permit granted as provided in this chapter. Provided, that this section shall not apply to fire engines, fire trucks, or other vehicles or appartus belonging to any municipality or to any municipal volunteer fire department or salvage company organized under the laws of Ohio or used by such department or company in the discharge of its functions.

HISTORY: — 110 v. 321; 111 v. 245.

Section 7248-2 G. C., in prescribing a maximum height for vehicles operated upon the public highways, is to be taken as referring to the vehicle alone, and not to the height of vehicle and load.

Op. Atty. Gen. (1922), p. 387.

SEC. 7249. **[Operation of commercial cars with respect to speed and weight.]** No commercial cars of the kinds and weights enumerated in this section, shall be operated in the business and closely built up portions of a municipality or in any other portions thereof, or outside of municipalities at a greater rate of speed than is reasonable and proper having regard for the width, traffic, use and the general and usual rules of such road or highway. A greater rate of speed than the following shall be prima facie evidence of a rate of speed greater than is reasonable and proper for general safety and the protection of the roadway:

1. For vehicles equipped with solid rubber tires whose maximum weight of vehicles and load does not exceed four tons, twelve miles an hour in the business or closely built up portion of a municipal corporation, fifteen miles an hour in other portions thereof, or twenty miles an hour outside of a municipal corporation, and whose maximum weight of vehicle and load exceeds four tons, twelve miles an hour in the business or closely built up portions of a municipal corporation, fifteen miles an hour in other portions thereof, or fifteen miles an hour outside of a municipal corporation.

2. For vehicles equipped with pneumatic tires designed for the transportation of property, whose maximum weight of vehicle and load is three tons and not more than six tons, fifteen mile an hour in the business and closely built up portions of municipal corporations, twenty miles an hour in other portions thereof, or twenty-five miles an hour outside of municipal corporations.

For vehicles equipped with pneumatic tires designed for the transportation of property, whose maximum weight of vehicle and load is more than six tons, twelve miles an hour in the business and closely built up portions of municipal corporations, eighteen miles an hour in other

portions thereof, or twenty miles an hour outside of municipal corporations.

3. For motor vehicles drawing more than one trailer or one semi-trailer, twelve miles an hour.

4. For vehicles equipped with iron or steel tires whose maximum weight of vehicle and load exceeds six tons, ten miles an hour.

5. For vehicles equipped with pneumatic tires designed for the transportation of persons, fifteen miles an hour in the business or closely built up portions of municipal corporations, twenty miles an hour in other portions of cities, twenty-five miles an hour in other portions of villages, or thirty-five miles an hour outside of municipal corporations.

HISTORY: — 107 v. 140; 110 v. 321; 111 v. 242.

SEC. 7249-1. **[Weight, carrying capacity and tire widths must be displayed plainly.]** No commercial car shall be operated upon the improved streets, highways, bridges or culverts within this state which does not display on the side thereof in plain, legible letters and figures, the weight of the vehicle fully equipped, manufacturer's rated carrying capacity, or the passenger seating capacity and the tire widths of such vehicle.

HISTORY: — 110 v. 322.

SEC. 7249-2. **[Classification of improved county and township roads by county commissioners, etc.]** The county commissioners of the various counties shall classify the improved county and township roads and all other improved roads within their respective counties except inter-county highways and main market roads which have been or may hereafter be constructed or maintained by the state, with reference to the maximum weight and minimum weight of five tons of vehicle and load or speed permitted thereon.

In making the classification the county commissioners shall take into consideration the nature of the road-bed, construction and any other factors which are material in the proper classification of such highways. The county commissioners shall make rules and regulations governing the weight of vehicle and load and the speed of vehicles permitted on the several classes of highways. When thaws or excessive moisture renders such highways or any sections of same insufficient to bear the traffic thereon, or when such highways or any sections of them would be damaged or destroyed by heavy traffic during the period of thawing or excessive moisture, the maximum weight of vehicle and load and the maximum speed or both, shall be reduced as provided in section 7250 of the General Code.

HISTORY: — 111 v. 245.

SEC. 7249-3. **[Rules and regulations made by county commissioners; signs.]** All rules and regulations shall be made by the county commissioners at regular meetings by a majority vote of all the commissioners and the same shall be kept on file in the office of the county commissioners and open for inspection by the public. At least two days before such rules and regulations shall become effective the county commissioners shall cause to be placed and retained on such improved county and township highways or sections thereof, at both ends and at the points of intersection, signs of substantial construction which will conspicuously indicate the limitations of weight of vehicle and load or speed which will be allowed on such highway or section thereof and it shall be unlawful to operate upon such highway a vehicle whose maximum weight or speed is in excess of the limitations so prescribed. The expense of the purchase and erection of such signs provided for in this section shall be paid for from the county funds for the maintenance and repair of such highways.

HISTORY: — 111 v. 246.

SEC. 7250. **[Reduction of weight and speed during times of thaws and moisture.]** When thaws or excessive moisture render the improved highways of this state or any sections of the same insufficient to bear the traffic thereon, or when such improved highways or any sections of them would be damaged or destroyed by heavy traffic during the period of thawing or excessive moisture, the maximum weight of vehicle and load, or the maximum speed, or both, for motor vehicles as prescribed by law shall be reduced in the following manner:

On main market roads and inter-county highways of the state, which have been taken over by the the state, the director of highways and public works shall prescribe such reduction which shall not be more than twenty-five per cent; on improved highways other than main market roads and inter-county highways taken over by the state, the county commissioners shall prescribe such reduction which shall not be more than twenty-five per cent. Such schedule of such reduction of maximum weights and speeds shall be filed for the information of the public in the office of the county commissioners of each county in which such schedule is operative and in the office of the director of highways and public works. The director of highways and public works, or the county commissioners at least two days before such reduction shall become effective, shall cause to be placed and retained on said improved highways or sections thereof, at both ends and at the points of intersections by principal roads during the period of such reduced limitation of weight, or speed, or both, signs of substantial construction which will conspicuously indicate the limitation of weight of vehicle and load, and speed, which will be allowed on such highway or section thereof, and it shall be unlawful to operate upon any such highway, a motor vehicle whose maximum weight or speed is in excess of the limitations so prescribed. The expense of the

purchase and erection of signs provided for in this section shall be paid for from funds for the maintenance and repair of roads.

HISTORY: — 107 v. 140; 110 v. 322.

See 14 Ohio App. 334, cited under Sec. 7572.

SEC. 7251. **[Liability for damages; prosecution; application of moneys.]** Any person violating any provision of laws relating to or regulating the use of inter-county highways or main market roads shall be liable for all damages resulting to any such street, highway, bridge or culvert by reason of such violation. In case of any injury to such a street, highway, bridge or culvert such damages shall be collected by civil action brought in the name of the state on the relation of the director of highways and public works and it shall be the duty of the attorney general or prosecuting attorney of any county to institute such action when so requested by the director of highways and public works and to prosecute the same to final judgment. In case of any injury to an improved public road, bridge or culvert of a county other than an inter-county highway or main market road, by reason of the violation of any of the rules or regulations made by the county commissioners in accordance with sections 7249-2 and 7249-3 of the General Code, the damages shall be recovered by a civil action prosecuted by the county commissioners, and in case of an injury to an improved public street, highway, bridge or culvert of a municipal corporation, it shall be the duty of the proper authorities of such municipal corporation to institute an action for the recovery of such damages. All damages collected under the provisions of this section shall be paid into the treasury of the state or proper political subdivision thereof, and credited to any fund for the repair of streets, highways, bridges or culverts. Any person violating any rule or regulation made by the county commissioners in accordance with sections 7249-2 and 7249-3 of the General Code shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten dollars and not more than one hundred dollars.

HISTORY: — 107 v. 141; 110 v. 322; 111 v. 246.

SEC. 7251-1. **[Deputies detailed for enforcement of act.]** In those counties having forty miles or more of improved inter-county or main market roads the sheriff of each county shall and in all other counties may detail one or more deputies for the work of enforcing the provisions of this act; and the county commissioners of each county shall appropriate such amount of money annually, from the road fund of such county as shall be necessary to equip and to compensate such deputy or deputies for services rendered hereunder. The road superintendents and assistant road superintendents of the state highway department and patrolmen of the county highways may be deputised by the sheriffs of the counties in which

they are employed, as deputy sheriffs, but shall receive no extra compensation.

HISTORY: — 110 v. 323.

SEC. 13421-17. **[Penalty.]** Whoever violates any of the provisions of section 7246 to 7250 inclusive, of the General Code shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars for the first offense, and for each subsequent offense shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not more than ninety days, or both fined and imprisoned.

HISTORY: — 106 v. 661; 107 v. 141; 110 v. 323.

CHAPTER XII

Motor Vehicles

SEC. 6290. **[Definitions of terms.]** Definitions of terms, as used in this chapter and in the penal laws, except as otherwise provided:

1. "Vehicle" means everything on wheels or runners, except vehicles operated exclusively on rails or tracks, and vehicles belonging to any police department, municipal fire department, volunteer fire department or salvage company organized under the laws of Ohio or used by such department or company in the discharge of its functions.

The provisions of this chapter shall apply to equestrians, horses hitched to vehicles and led horses in the same manner as to vehicles.

2. "Motor vehicle" means any vehicle propelled or drawn by power other than muscular power, except road rollers, traveling power plants not designed for or employed in general highway transportation, traction engines and agricultural tractors.

3. "Agricultural tractor" and "traction engine" mean any self-propelled vehicle designed or used for drawing other vehicles or wheeled machinery but having no provision for carrying loads independently of such other vehicles, and used principally for agricultural purposes.

4. "Commercial tractor" except as defined in subdivision 3 means any motor vehicle having motive power designed or used for drawing other motor vehicles, or designed or used for drawing another motor vehicle while carrying a portion of such other motor vehicle or its load, or both.

5. "Passenger car" means any motor vehicle designed and used for carrying not more than seven persons.

6. "Commercial car" means any motor vehicle having motive power designed and used for carrying merchandise or freight, or for carrying more than seven persons, or used as a commercial tractor.

7. "Trailer" means any vehicle without motive power designed or used for carrying property or persons wholly on its own structure and for being drawn by a motor vehicle.

8. "Semi-trailer" means any vehicle of the trailer type without motive power so designed or used with another and separate motor vehicle that in operation a part of its own weight or that of its load, or both, rests upon and is carried by such other vehicle furnishing the motive power for propelling itself and the vehicle herein referred to.

9. "Pneumatic tires" means tires of rubber and fabric or tires of similar material, inflated with air.

10. "Solid tires" means tires of rubber or similar elastic material not dependent upon confined air for the support of the load.

11. "Solid-tire vehicle" means any vehicle equipped with two or more solid tires.

12. "Owner" includes any person, firm or corporation other than a manufacturer or dealer having title to a motor vehicle or the exclusive right to use thereof for a period of greater than thirty consecutive days.

13. "Manufacturer" and "dealer" include all persons, firms and corporations engaged in the business of manufacturing, selling or dealing in motor vehicles.

14. "Operator" includes any person who drives or operates a motor vehicle upon the public highways.

15. "Chauffeur" means any operator who operates a motor vehicle as an employee or for hire.

16. "State" includes the territories and federal districts of the United States, and the provinces of the Dominion of Canada.

17. "Public roads and highways" for vehicles include all public thoroughfares, bridges and culverts.

HISTORY: — 100 v. 72; 108 v. Pt. II, 1078; 110 v. 135; 111 v. 239.

SEC. 6290-1. **[Bureau of motor vehicles created; appointment of commissioner; duties.]** There is hereby created in the office of the secretary of state, a bureau of motor vehicles which shall be administered by a commissioner of motor vehicle referred to hereafter in this act as the commissioner. The commissioner of motor vehicles shall be appointed by the secretary of state and shall serve at his pleasure. He shall be paid a salary of thirty-six hundred dollars per annum. It shall be the duty of the commissioner to enforce the motor vehicle laws of the state and he may appoint such number of deputies, inspectors, clerks, stenographers and other employes as may be necessary for such purpose and fix their compensation. The salaries and the actual necessary expenses incurred by the commissioner or any of his subordinates when approved by the secretary of state, shall be paid from the state treasury on the warrant of the auditor of state. The commissioner of motor vehicles shall give a bond for the faithful performance of his duties in such amount and with such security as the secretary of state may approve. When in the opinion of the commissioner of motor vehicles, it is deemed advisable, any deputy or other employe may be required to give bond in such amount and with such security as he may approve.

The secretary of state may investigate the activities of the bureau of motor vehicles and have access to its records at any time, and the commissioner shall make a report to the secretary of state at any time upon request.

HISTORY: — 111 v. 460.

SEC. 6291. **[Application of annual license tax.]** An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state, for the purpose of enforcing and paying the expense of administering the law relative to the registration and operation of such vehicles and of maintaining and repairing public roads, highways and streets. Such tax shall be at the rates specified in this chapter and shall be paid to and collected by the deputy commissioner, at the time of making application for registration as herein provided, and in cases where such deputy commissioner is not county auditor, such monies shall be paid to the county auditor.

HISTORY:—99 v. 538; 108 v. Pt. II, 1079; 110 v. 244; 111 v. 461.

SEC. 6291-1. **[Designation of deputy commissioners; duties; bond.]** The commissioner of motor vehicles shall designate the county auditor and one or more persons in each county to act as deputy commissioners, who shall accept applications for the annual license tax, and assign distinctive numbers in the same manner as the commissioner of motor vehicles. Such deputy commissioners shall be located in such cities or villages in the county as the commissioner sees fit. For the purpose of facilitating the distribution of license tags, the commissioner may provide for the establishment of branch offices in cities having a population of one hundred thousand or over according to the last federal census.

The commissioner shall assign to each deputy commissioner a series of numbers sufficient to supply the demand at all times in such community, and shall keep a record in his office of the numbers within the series so assigned. Each deputy commissioner shall be required to give bond, the form and amount of which shall be prescribed by the commissioner of motor vehicles.

The deputy commissioners shall keep a file of each application and register such motor vehicle with the name and address of the owner thereof.

HISTORY:—111 v. 461.

SEC. 6292. **[Schedule of rates; passenger cars.]** Each owner of a motor bicycle, motorcycle or passenger car shall pay or cause to be paid taxes as follows:

For each motor bicycle or motorcycle, two dollars and fifty cents; and for each side car, one dollar and fifty cents.

For the calendar year 1925 and if House Bill 44 enacted by this session of the General Assembly shall not have become a law, for each calendar year thereafter, for each passenger car having twenty-five horsepower or less, eight dollars; for each such car having more than

twenty-five and not more than thirty-five horsepower, twelve dollars; and for each such car having more than thirty-five horsepower, twenty dollars.

If House Bill 44, enacted by this session of the General Assembly, shall become a law, then for the calendar year 1926 and each calendar year thereafter, for each passenger car having twenty-five horsepower or less, four dollars; for each such car having more than twenty-five and not more than thirty-five horsepower, six dollars; for each such car having more than thirty-five horsepower, ten dollars.

HISTORY: — 99 v. 538; 108 v. Pt. II, 1079; 110 v. 222; 111 v. 301; 111 v. 240.

NOTE: Section 6292 was amended twice at the 1925 session of the General Assembly. It was a part of H. B. No. 44, which was filed in the office of the Secretary of State, April 21, 1925, and also a part of H. B. No. 304, which was filed in the office of the Secretary of State April 16, 1925.

H. B. 304 contained the following provision:

"Section 3. This act shall take effect on December 1, 1925, and the repeal of Section 6292 contained in Section 2 of this act shall repeal Section 6292 as enacted in House Bill 44, passed by this session of the General Assembly, if said bill shall have become a law before said date."

Under authority of this provision, Section 6292 as found in H. B. No. 44, was in effect until December 1, 1925.

HISTORY: — 99 v. 538; 108 v. Pt. II, 1079; 110 v. 222; 111 v. 240; 111 v. 301.

The Legislature, having the power of classification, has also the power to select the standard on which to base the classification.

The Legislature, in laying an excise tax upon the privilege of operating motor vehicles upon the public highways, may classify motor vehicles into pleasure cars and commercial vehicles.

The Legislature may constitutionally classify commercial motor vehicles according to horse power.

The use of the horsepower formula of the Society of Automobile Engineers, adopted by the Legislature for the purpose of computing horsepower of motor vehicles, does not in operation result in inequalities so great as to amount to discrimination and is therefore not unconstitutional.

Section 6292, General Code, as amended (110 O. L. 222) providing for a tax of $12 upon each commercial motor car having more than 25 and not more than 30 horsepower, and in addition thereto, 30 cents for each 100 pounds gross weight of vehicle and load, or fractional part thereof, and providing for a tax of $20 upon each commercial car having more than 30 horsepower, and in addition thereto, 80 cents for each 100 pounds gross vehicle and load, or fractional part thereof, is a valid and constitutional enactment, not repugnant to the Fourteenth Amendment to the United States Constitution, nor to Article I, Section 1, and Article I, Section 19, of the Ohio Constitution.

Section 6292, General Code (110 O. L. 222), and Sections 6290, 6291, 6292,

6293, 6294, 6295, 6309, 6309-1, 6309-2 (108 O. L. pt. 2, at pages 1078 and 1165), are not repugnant to Article XII, Section 5, Article XII, Section 2, Article II, Section 1, Article II, Section 22, Article XII, Section 4, Article XII, Section 6, Article XVIII, Sections 2, 3 and 13, nor to Article X, Section 7, of the Ohio Constitution.

Fisher Bros. Co. v. Brown — 111 O. S. 602.

If a statute providing for an excise tax upon the operation of motor vehicles upon the public highways is not at the time it is passed subject to the objection of discrimination, it is not rendered invalid upon that ground merely by a subsequent increase of the tax as to a certain class of motor vehicles included within its original terms.

Foltz Grocery Co. v. Brown — 111 O. S. 646.

NOTE: Sections 6290, 6291, 6292, 6293, 6294, 6295, 6309, and 6309-2 were amended and section 6309-1 repealed in 1925.

After the date on which House Bill 44, passed by the 86th General Assembly, became effective, persons who purchased license plates for any motor vehicle, other than a commercial car, for the year 1925 or any subsequent year, are required to pay the full year's tax provided by law for that year, regardless of the date on which such license is obtained.

Op. Atty. Gen. No. 2411, Apr. 25, 1925.

The assessment of an annual fee by a municipal corporation upon owners of motor vehicles in a municipality, the fund to be used for the cleaning and repair of the streets, is an excise tax though denominated a license fee. No municipality has power to levy such excise tax in addition to that levied by the state.

Freeman v. Cambridge. 113 O. S. ——.

SEC. 6292-1. **[Schedule of rates; commercial car, trailer or semi-trailer; minimum tax.]** Each owner of a commercial car, trailer or semi-trailer, shall pay or cause to be paid taxes as follows:

For each commercial car having motor power and for each trailer or semi-trailer, seventy cents per one hundred pounds or part thereof, for the first two thousand five hundred pounds or part thereof of weight of vehicle fully equipped; ninety cents per one hundred pounds for each one hundred pounds or part thereof in excess of six thousand pounds up to pounds up to and including six thousand pounds; one dollar for each one hundred pounds or part thereof in excess of six thousand pounds up to and including nine thousand pounds; one dollar and fifteen cents for each one hundred pounds or part thereof in excess of nine thousand pounds.

The minimum tax for any vehicle having motor power other than a motor bicycle or a motorcycle shall be eight dollars for the calendar year 1925, and four dollars for each year thereafter; and for each trailer or semi-trailer two dollars and fifty cents.

Each manufacturer or dealer shall pay or cause to be paid a tax of twenty dollars for each place of business in this state.

HISTORY: — 111 v. 241.

SEC. 6293. **[Weight; how determined; horse-power; how com-**

puted.] The weight of all motor vehicles, shall be the weight of the vehicle fully equipped as represented by the manufacturer, or as named in the shipping bill; provided, that if this be not known, or is not the actual weight, the actual weight as determined on a standard scale shall govern.

The horse-power of all vehicles propelled by internal combustion engines shall be computed upon the following formula: Square the diameter of the cylinder measured in inches, multiply by the number of cylinders and divide by two and one-half. For all motor vehicles propelled by steam engines the rating of the horse-power thereof shall be based on the system of rating adopted by the United States government.

For all motor vehicles propelled by electricity the rating of the horse-power thereof shall be the normal horsepower of the electric motor therein, to be ascertained by the secretary of state.

HISTORY: — 99 v. 538; 108 v. Pt. II, 1080; 111 v. 241.

SEC. 6294. **[Application for registration; information required.]** Every owner of a motor vehicle which shall be operated or driven upon the public roads or highways of this state shall before the first day of January of each year, except as herein otherwise expressly provided, cause to be filed, by mail or otherwise, in the office of the commissioner of motor vehicles or a deputy commissioner, a written application in triplicate for registration for the following year, begining the first day of January of such year, on blanks to be furnished by the commissioner of motor vehicles for that purpose, containing the following information:

(1) A brief description of the motor vehicle to be registered, including the name of the manufacturer, the factory number of such vehicle, the year's model, engine number, the amount of motive power, if any, in figures of horsepower, according to the formula prescribed in this chapter, and in case of commercial cars, the gross weight of vehicle and load, computed according to the formula prescribed in this chapter.

(2) The name, residence and business address of the owner, and township, city or village in which such owner resides.

(3) The district of registration, which shall be determined as follows:

(a) In case the motor vehicle to be registered is used for hire or principally in connection with any established business or branch business, conducted at a particular place, the district of registration shall be the municipal corporation in which such place is located; and if not located in any municipal corporation, the county and township in which such place is located.

(b) In case such vehicle is not so used, the district of registration shall be the municipal corporation or county in which the owner resides at the time of making application.

(4) Whether such motor vehicle is a new or used motor vehicle.

(5) Date of purchase of such motor vehicle and whether such motor vehicle has been listed for taxation as personal property by the present owner.

At the time of making such application the applicant shall present for inspection proper bills of sale or sworn statement of ownership, the originals of which have been duly filed with the clerk of courts, or a certificate or certificates of the clerk of courts certifying that such bills of sale or sworn statement of ownership have been duly filed with such clerk, showing title to the motor vehicle to be registered in such application. If such application is not in proper form, or if the applicant owned the motor vehicle on the preceding tax listing day and it was not listed for personal property taxes, or if proper bills of sale or sworn statement of ownership or proper certificate thereof, does not accompany the application, the license shall be refused. A duplicate copy of such application shall be forwarded by the deputy commissioner to the commissioner of motor vehicles. Each deputy commissioner shall be allowed a fee of not to exceed fifteen cents, which shall be in addition to the license tax and shall be for the purpose of paying for the additional help required in the receiving of applications and the issuing of licenses. In the case of the county auditor, such fifteen cent fee shall be paid into the auditor's fee fund. Each application for registration shall be signed and verified by the owner before a person authorized by law to administer oaths and each deputy commissioner shall be authorized to administer oaths in the matter of applications for registration and no fee shall be charged for such service. Each statement in any application for registration shall be deemed a material statement in any prosecution for perjury. Each deputy commissioner other than the county auditor shall forthwith, upon receipt of any application for registration together with the license fee, transmit such fee together with a duplicate copy of the application to the county auditor of the county in which such persons resides. In any case where an application for registration is made to any deputy commissioner in any county other than the county in which such applicant resides, such fee and duplicate copies of the application shall be sent at once to the county auditor of the county in which such applicant resides and the original copy of such application shall be mailed to the commissioner of motor vehices at Columbus. After being properly recorded, such application shall then be returned to the deputy commissioner with whom such application was filed. Nothing in this act shall prevent any person from making an application for a motor vehicle license direct to the commissioner of motor vehicles. Each deputy commissioner shall retain in his office a copy of said application until the first day of April of the following year after the date of such application. This copy shall be for public reference.

HISTORY: — 100 v. 72; 109 v. 239; 110 v. 245; 111 v. 461.

SEC. 6294-1. (No change since 1922 edition).

A policy of insurance was issued, indemnifying the owner of an automobile against loss by "theft, robbery, and pilferage." In construing the term "theft," it should be given the usual meaning and understanding employed by persons in the ordinary walks of life.

Where an owner of an automobile executes a contract of sale for the car, helps the vendee change the license numbers and, in pursuance of his contract of sale, transfers possession and title to vendee, who pays therefor with a forged check, such fraudulent transaction so perpetrated by the vendee does not constitute a "theft", within the terms of the policy.

Royal Insurance Co., Ltd., v. Jack. 113 O. S. ——.

Decided June 2, 1925.

SEC. 6295. **[Tax payable; apportionment per quarter.]** Every owner of a commercial car, before operating or driving such motor vehicle upon the public roads or highways of this state or permitting the same to be driven, shall file a like application.

On all applications required by this section the taxes payable shall be as follows:

1. If such application be made prior to April first, the normal tax.
2. If made on or after April first and prior to July first, three-fourths of the normal tax.
3. If made on or after July first and prior to October first, one-half of the normal tax, and
4. If made on or after October first, one-fourth of the normal tax.

Publicly owned and operated motor vehicles used exclusively for public purposes shall be registered as provided in this chapter, without charge of any kind; but this provision shall not be construed as exempting the operation of such vehicles from any other provision of this chapter and the penal law relating thereto.

The secretary of state shall accept any application to register a motor vehicle owned by the federal government which may be made by any officer, department or agent of such government.

HISTORY: — 100 v. 72; 103 v. 764; 108 v. Pt. II, 1081; 111 v. 302.

See Opinions of Attorney General (1925) No. 2411, cited under Sec. 6292.

SEC. 6296. (No change since 1922 edition).

SEC. 6297. **[Number, etc., good for one year.]** Each certificate, number, placard or badge issued by the commissioner of motor vehicles to owners, manufacturers, or dealers, under this chapter, shall be for the period of one year beginning the first day of January.

HISTORY: — 100 v. 72; 111 v. 463.

See Opinions of Attorney General (1923), p. 391, cited under Sec. 614-97.

SEC. 6298. **[Assignment and issue of distinctive number.]** Upon

the filing of such application and the payment of the tax imposed by this chapter, the commissioner or deputy shall assign to such motor vehicle a distinctive number, and, issue and deliver to the owner in such manner as the commissioner of motor vehicles may select, a certificate of registration, in such form as the commissioner of motor vehicles shall prescribe, and two number plates, duplicates of each other, in person or at the post or express office within the state of Ohio named in said application. In the event of the loss, mutilation, or destruction of any certificate of registration, provided for in this section or of any license plates, the owner of a registered motor vehicle or manufacturer or dealer, as the case may be, may obtain from the commissioner of motor vehicles, a duplicate or duplicates thereof, or new plates bearing a different number, if the commissioner deems it advisable, upon filing in the office of the commissioner an affidavit, satisfactory to the commissioner, showing the facts of such loss and paying a fee of one dolllar for such certificate of registration and each license plate. It shall be the duty of every owner or chauffeur holding a certificate to notify the commissioner in writing of any change of residence of such person within ten days after such change occurs.

HISTORY: — 99 v. 539; 108 v. Pt. II, 1081; 110 v. 246; 111 v. 463.

SEC. 6299. **[Index of all licenses issued to be filed in commissioner's office.]** The commissioner of motor vehicles shall keep on file in his office a complete index of all licenses issued, by license numbers, by makes of motor vehicles according to motor number, and alphabetically by names of owners, a full and correct list of chauffeurs' licenses alphabetically arranged, and a full and correct list of the names and addresses of the deputy commissioners, together with the numbers within the series that have been assigned to each. Such list shall also show such numbers as have been sold directly by the commissioner of motor vehicles. The commissioner of motor vehicles shall also be required to mail monthly, to each deputy commissioner and to the chief of police in each municipality in Ohio a copy of the list above described.

HISTORY: — 99 v. 539; 107 v. 545; 110 v. 246; 111 v. 464.

SEC. 6300. (No change since 1922 edition.)

SEC. 6301. **[Manufacturers' and dealers' registration of certified copies of registration.]** A manufacturer of, or dealer in motor vehicles, shall make application, in like manner, as provided in this chapter, for each gasoline, steam, electric or other make of motor vehicles, so manufactured or dealt in, to be determined by the motive power of such vehicles; excepting that for the purpose of such application the district of registration shall be stated for each place in this state at which the business of manufacturing or dealing in motor vehicles or any branch

thereof is carried on, and the application shall show the make, or makes, so manufactured or dealt in at each such place. Upon the filing of such application, and the payment of the tax imposed by this chapter the commissioner of motor vehicles shall assign to each make of motor vehicle therein described a distinctive number which must be carried and displayed by each motor vehicle of such make in like manner as provided in this chapter while it is operated on the public highway until it is sold or transferred. Such manufacturer or dealer, so registering a make of motor vehicle, may procure certified copies of such registration certificate upon the payment of a fee of two dollars. With each of such certified copies the commissioner of motor vehicles shall furnish two placard with the same numbering provided in the original registration certificates, and may add thereto such special designation as may be necessary to distinguish one set thereof from another. Nothing in this section nor in section six thousand two hundred and ninety-two of the General Code, shall be construed as to exempt any manufacturer or dealer from registration or taxation in respect of any other motor vehicle of which he is the owner for any purpose other than sale, lease or other like disposition.

HISTORY: — 100 v. 73; 106 v. 335; 108 v. Pt. II, 1082; 111 v. 464.

SEC. 6302. (No change since 1922 edition.)

Before a person may act as chauffeur of a motor vehicle under House Bill 474, he shall be registered as provided under section 6302 and such registration shall be annual as required by Section 6297 G. C.

Op. Atty. Gen. (1923), p. 391.

SEC. 6303. (No change since 1922 edition.)

SEC. 6304. (No change since 1922 edition.)

SEC. 6305. (No change since 1922 edition.)

SEC. 6306. (No change since 1922 edition.)

SEC. 6306-1. **[Reciprocal agreements with other states authorized.]** The secretary of state, the director of highways and public works and a member of the public utilities commission, designated by the commission for that purpose, are hereby authorized and empowered to enter into such reciprocal contracts and agreements as they may deem proper or expedient with the proper authorities of adjoining states, regulating the use, on the roads and highways of this state, of trucks and automobiles and any other motor vehicles owned in such adjoining states, and duly licensed under the law thereof.

They are likewise authorized and empowered to confer and advise with the proper officers and legislative bodies of this and other states, and the District of Columbia with a view to promoting and to promote reciprocal agreements under which the registration of vehicles owned in

this state, and the licenses of chauffeurs residing in this state, shall be recognized by such other states and federal districts.

HISTORY: — 111 v. 233.

SEC. 6307. (No change since 1922 edition.)

SEC. 6308. **[Jurisdiction in actions for injury to person or property by motor vehicle.]** Actions for injury to a person or property, caused by the negligence of the owner or operator of a motor vehicle, may be brought, by the person injured, against such owner or operator in the county wherein such injury occurs. A summons in such action against any defendant or defendants shall be issued to the sheriff of any county within this state wherein such defendant or defendants reside and may be served as in other civil actions, notwithstanding any contrary provision of law for the service of summons in civil actions.

HISTORY: — 99 v. 545; 110 v. 407.

By the provisions of Section 6308, General Code, prior to the amendment of that section on March 8, 1923, a person injured by the negligent operation of an automobile could maintain an action against the owner of such automobile before a justice of the peace holding office in the township where such injured person resides, though such owner be a resident of another township or even of another county, and though service of summons be not made in the township where such justice of the peace holds office.

In such case summons can only be regularly served by the sheriff of the county of the defendant's residence.

Section 6308, General Code, does not enlarge the general jurisdiction of trial courts, but on the contrary is a venue statute which merely enlarges the geographic boundaries for the exercise of the general jurisdiction conferred upon such courts by other statutes.

Where a case is pending before a justice of the peace having jurisdiction of the subject-matter of such cause, and a motion is made by an attorney employed by the defendant for a dismissal of such cause, "for the reason that the court in which the action was filed has no jurisdiction of the subject-matter involved," such motion amounts to a waiver of irregularities in the service of summons, and enters a general appearance of the person of the defendant in the action.

Klein v. Lust — 110 O. S. 197.

All statutes relating to procedure are remedial in their nature and should be liberally construed and applied to effect their respective purposes.

A cause of action for personal injury survives the death of the injured party, and all the rights, privileges, incidents and options which the injured party may have had in his lifetime inure to the benefit of his personal representatives or next of kin, respectively, unless the statutes clearly provide otherwise.

Furnace Co. v. Rinehart — 108 O. S. 117.

In an action for damages for wrongful death, caused by being struck by defendant's automobile, it is error for the court to direct a verdict for defendant at the close of plaintiff's evidence, where such evidence tends to prove that deceased alighted from a street car, passed around the rear thereof and was starting across the street when struck by an automobile owned and driven by defendant, and that, at the time of the accident, it was being driven at an unlawful rate of speed, estimated as high as fifty miles per hour.

In such case an allegation in plaintiff's petition and evidence to the effect that deceased alighted from the rear of the street car, passed around the rear of it, started to cross the street, and had gone but a few feet when struck, does not raise a presumption of negligence on the part of the deceased.

Hughes, Admx. v. Schultz, 17 Ohio App. 262. Decided January 29, 1923.

Where an original automobile insurance policy is issued, covering loss by fire only, with a premium of $5.50 and a $1000 limit of recovery, to which is attached a rider providing for full coverage for accidental collision and an additional premium of $62 for such coverage, the rider will be read into the policy and construed as a part of the contract, and in case of accidental collision the damage recoverable is not limited to $1000.

Union Ins. Soc. v. DeSalvo, 17 Ohio App. 477. Decided March 6, 1923.

While an automobile is not a dangerous instrument per se, it may become such if operated by one who is unskilled in its use; and, where the owner intrusts such a machine to an inexperienced or incompetent person, liability for damages may arise.

Where a father intrusts his automobile to his son, a youth of 14 years, unaccustomed to its use, for purposes wholly apart from any business or enterprise of the father, the question of competency is one for the jury under proper instructions.

In such cases the liability of the owner would not rest upon ownership or agency, but upon the combined negligence of the owner and driver; negligence of the father in intrusting the machine to an incompetent driver, and negligence of the son in its operation.

Elliott v. Harding. 107 O. S. 501. Decided May 8, 1923.

Sections 9510-3 and 9510-4, Ohio General Code, providing that the plaintiff in in a personal injury or wrongful death action who reduces his claim to judgment, shall be entitled to have the insurance money under a contract between a casualty company and the defendant applied to the satisfaction of his judgment, and that he may reach the same in an action against the insurance company and the defendant jointly, is a constitutional and reasonable regulation of the insurance business.

Where the insurance company denies liability to the defendant under its contract of casualty insurance, in an action brought by a judgment creditor against the insurance company and defendant jointly, to apply the insurance money to the satisfaction of his judgment, the judgment creditor may assert any facts or rights available to the defendant to establish the liability of the insurance company, including waiver and estoppel.

An insurance company waives causes of forfeiture of which it has knowledge by retaining the premiums received, electing to treat the policy as a valid and continuing obligation and in the case of liability insurance, assuming the entire charge of the defense of an action against the assured.

Where an insurance company, under the terms of its policy, excludes the assured from any control of litigation against him and compels an injured plaintiff to engage in litigation conducted by the insurance company to establish his rights, such company is equitably estopped from denying liability to the assured and, under the statute, to the plaintiff in case of an adverse judgment.

The intention of automobile liability insurance covering claims for personal injury and death is to insure the indivdual, not the automobile, and the insurance follows the owner, not the machine.

An insurance company, which has issued a casualty policy covering an Overland automobile belonging to M, is liable for an accident wherein a Hupp machine was involved, which M had received in trade for his Overland, where after knowledge of the exchange the company continued the policy in force and subsequently took exclusive charge of the defense in the actions brought against M on account

of the accident and which resulted in the judgments it is sought to satisfy in the present case.

Where liability under a policy of casualty insurance is limited to $5,000, on account of one accident resulting in injury or death to one person, and to $10,000 on account of injury or death to more than one person, the limitation to $5,000 is applicable where two judgments have been obtained, aggregating more than $5,000, one for injury to a boy and the other for expenses and loss of services suffered by his father.

Reinhart v. Indemnity Co., 25 O. N. P. (N. S.) 331. Decided December 19, 1924.

An insurance policy which contains language reasonably susceptible to different interpretations will be given the construction most favorable to the assured.

Under an insurance policy indemnifying the assured against direct loss or damage to the automobile therein described by "accidental collision with another object, either moving or stationary," and immediately after such provisions are the following exceptions and limitations: "(Excluding, however, under this clause only, ordinary breakage and all loss or damage by fire arising by reason of accidental collision.) Loss or damage to any tire due to puncture, cut, gash, blowout, or other ordinary tire trouble, or in any event, loss or damage to any tire unless caused in an accidental collision which also causes other loss or damage to the insured automobile, shall not be covered hereby," the insurance company is liable for injury to such automobile caused by a collision with the paved roadway as a result of turning a sudden and sharp curve which threw the automobile over on its side.

Indemnity Co. v. Jones. 111 O. S. 84. Decided June 21, 1924.

In the trial of an action for damages resulting from the collision of motor vehicles at a city street intersection, the petition having averred that negligence of the defendant in the operation of his motor bus caused the collision and resulting injuries, and the defendant by answer having denied negligence upon his part and asserted that plaintiff's injury resulted solely from his own negligence, the rejection of duly enacted and existing ordinances of the city, constituting its traffic regulations, tendered by the defendant, which there was evidence tending to show defendant observed and plaintiff disregarded, is error, though such ordinances were not pleaded by the defendant.

Where impairment of earning capacity is pleaded as special damages, it is essential that evidence be adduced from which an estimate thereof may be made by the jury, and in the absence of any evidence upon the subject, it can not properly be submitted to the jury as an element of damages.

In the submission of an issue, joined as above stated, it is error prejudicial to the defendant to instruct the jury that "the burden of proof is upon the defendant to prove the negligence of the plaintiff, and to prove that the negligence of the plaintiff was the proximate cause of the collision and the proximate cause of the injuries, if any, plaintiff suffered"; and also that "negligence on the part of either party must be alleged by the other party and must be proven by the party alleging it by a preponderance of the evidence."

Hanna v. Stoll, 112 O. S. 331. Decided April 14, 1925.

SEC. 6309. **[Accounting between county auditor and county treasurer; account with municipal corporation and county district.]** Each business day, the county auditor shall make a statement to the county treasurer, showing the amount of taxes collected on the preceding day under the provisions of this act, and at the same time pay into the county

treasury the amount collected on such day. The county auditor shall open an account with each municipal corporation in the county and also with the county district of registration. He shall apportion the tax collections between the state and the several districts of registration in the county, and pay the state's portion thereof monthly, to the commissioner of motor vehicles who shall pay the same into the state treasury. He shall distribute the proceeds of tax collections due districts of registration in the manner provided in section 6309-2 of the General Code.

HISTORY: — 99 v. 545; 104 v. 6; 108 v. Pt. II, 1165; 111 v. 465.

SEC. 6309-1. (Repealed 111 v. 470.)

SEC. 6309-2. **[Distribution and application of revenue collected.]** The revenue collected under the provisions of this chapter shall be distributed as follows:

(1) Fifty per centum of all taxes collected under the provisions of this chapter shall be for the use of the municipal corporation or county which constitutes the district or registration as provided in this chapter. The portion of such money due the municipal corporations shall be paid into the treasuries of such municipal corporations on the first business day of each month, and the remainder retained in the county treasury. In the treasuries of such municipal corporations and counties, such moneys shall constitute a fund which shall be used for the maintenance and repair of public roads, highways and streets and for no other purpose, and shall not be subject to transfer to any other fund. "Maintenance and repair" as used in this section, includes all work done upon any public road or highway, or upon any street, in which the existing foundations thereof is used as a sub-surface of the improvement thereof, in whole or in substantial part.

(2) Fifty per centum of all taxes collected under the provisions of this chapter shall be paid by the county auditor, monthly to the commissioner of motor vehicles who shall pay the same into the state treasury to the credit of the "state maintenance and repair fund."

The "state maintenance and repair fund" provided for herein shall be available for the use of the commissioner of motor vehicles in defraying the expenses incident to carrying out and enforcing the provisions of this chapter and for the use of the director of highways and public works in the manner provided by law. The general assembly shall make appropriations therefrom for such purpose.

HISTORY: — 108 v. Pt. II, 1083; 111 v. 465.

In resurfacing streets upon the assessment plan provided for by sections 3812 et seq. G. C., municipalities in providing for their share of the cost, may make use of the funds accruing to them under the provisions of section 6309-2 G. C. Op. Atty. Gen. (1922), p. 70.

1. Bridges and viaducts are not a part of a street, road or highway, within the meaning of (sub-division 2 of) Section 6309-2 of the General Code, providing

that the portion of the motor vehicle license tax going to a municipal corporation shall be used for the maintenance and repair of public roads, highways and streets and for no other purpose.

2. No part of the portion of the motor vehicle license tax going to a municipality may be expended in the maintenance and repair of such bridges and viaducts.

Op. Atty. Gen. (1924), p. 335.

A reading of these provisions clearly shows that the legislature, in using the term "street" did not thereby intend it should include everything within the boundaries thereof, such as bridges and viaducts. If it were intended that the term "street" include bridges and viaducts, why then was it necessary to add the words "bridges and viaducts"?

The statute with which you are concerned only uses the words "public highways, roads and streets." The words "bridges and viaducts" are not included and no doubt were omitted with the view that bridges and viaducts were not intended to be considered as a part of a street, road or highway. It would not be seriously contended that, within the meaning of the words contained in said section, sidewalks were to be considered as a part of a street, road or highway. In no more seriousness could it be contended that within such meaning bridges and viaducts were a part of a street, road or highway. On the other hand, it may be presumed that had the legislature intended the fund to be available for the maintenance and repair of bridges and viaducts, it would have specifically included bridges and viaducts, as it did in the above referred to legislation.

In the case of Dayton vs. Harmon, 12 Ohio Cir. Dec. 574, it was held that a bridge was not part of a street within the meaning of Section 7444 of the General Code, requiring county commissioners to keep in repair all parts of roads within municipal limits. By analogy the same reasoning is applicable to your question.

Op. Atty. Gen. (1924), p. 337.

SEC. 6310. (Repealed 111 v. 140.)

SEC. 6310-1. **[Requirements relative to lights on certain motor vehicles.]** Every motor vehicle, except a commercial vehicle as hereinafter provided, or a motorcycle, driven upon the public highways of the state, during the period from one-half hour after sunset to one-half hour before sunrise, and whenever fog renders it impossible to see at least two hundred feet ahead of such motor vehicle, shall display, while running, at least two lighted lamps on the forward part of such vehicle, one on each side and approximately of equal candle power; and every motorcycle so operated shall display at least one light on the forward part thereof, which light or lights shall in clear weather be visible at least two hundred feet in the direction in which such motor vehicle is proceeding. Every motor vehicle so operated shall display a red light from behind, and a white light shall be so arranged as to illuminate each and every part of the distinctive number borne upon a rear number plate.

The headlights required on any commercial motor vehicle of two tons carrying capacity or over, which is so governed, mechanically constructed or controlled that it cannot exceed a speed of fifteen miles per hour, shall be visible at least two hundred feet in the direction in which said vehicle

is proceeding; such light shall be sufficient to reveal any person, vehicle or substantial object on the road straight ahead for a distance of not less than one hundred feet, and shall comply in all other respects with the requirements of this section.

No headlights shall be used on any motor vehicle upon the highway except after the installation of a device to prevent glare, which device has been certified and approved by the commissioner of motor vehicles, in accordance with the provisions of section 6310-2 of the General Code, which device shall be applied and adjusted in accordance with the requirements of a certificate of approval to be issued by said commissioner. No such certificate of approval of any device shall be issued by said commissioner of motor vehicles unless such device, by actual test, conducted under his direction, complies with the following requirements for lights:

Whenever there is not sufficient light within the limits of the traveled portion of the highway to make all vehicles, persons, or substantial objects clearly visible within a distance of at least two hundred feet, the forward lights which a motor vehicle, except commercial vehicles, as hereinafter provided, is required to display, shall, when the motor vehicle is in motion, throw sufficient light ahead to show any person, vehicle, or substantial object upon the roadway straight ahead of the motor vehicle for a distance of at least two hundred feet.

Any light thrown directly ahead or sideways shall be so arranged that no dazzling rays or beams of reflected light from it or from any reflector shall at any time be more than three and one-half feet above the ground on a level road a distance of seventy-five feet ahead of such vehicle and such light shall be sufficient to enable the operator of the motor vehicle to see any person, vehicle, or substantial object upon the roadway or at the side of the road within ten feet of each side of the motor vehicle.

No lamp or light prescribed in this section shall be more than thirty-two candle power.

No spot light shall be used when another approaching vehicle is in sight, except when projecting its rays directly on the ground at a distance not exceeding fifty feet in front of the vehicles using such spot light to the right of the center of the highway.

HISTORY: — 109 v. 219; 111 v. 465.

Section 6310-1 G. C. (109 O. L. 219) makes no exemption in favor of commercial motor vehicles from compliance with any of the terms of said section. However, special provision is made for commercial motor vehicles of two tons carrying capacity or over, having a speed of not in excess of fifteen miles per hour, in that they need be equipped with certified and approved headlight devcies having a revealing power of but one hundred feet as compared with the general standard of two hundred feet.

Op. Atty. Gen. (1922), p. 5.

SEC. 6310-2. **[Approved devices for controlling front lights.]** The commissioner of motor vehicles may, after proper laboratory tests, approve certain devices for controlling the front lights on motor vehicles so that they shall comply with the provisions of this act, upon the payment of such fees as he may deem necessary to cover the actual cost of such tests, not to exceed the sum of fifty dollars, and may issue a certificate to the applicant securing the device, certifying that such tests have been made and that the device, when properly applied, complies with the requirements of this act.

HISTORY: — 109 v. 220; 111 v. 467.

SEC. 6310-3. **[Defining "motor vehicles" relating to "bills of sale."]** The term "motor vehicle" as used in the provisions of this chapter relating to "bills of sale" shall include only such newly manufactured motor vehicles as are in possession of a manufacturer or his agent, an importer or his agent, a distributor, dealer or sub-dealer in motor vehicles in this state duly registered as a manufacturer or dealer under the provisions of this chapter, and held by such registered manufacturer or dealer, for the sole purpose of distribution, transfer or sale to a registered dealer in the process of distribution from manufacturer or importer to the ultimate retail dealer, or held by such registered manufacturer or dealer for the sole purpose of distribution, sale or other like disposal to a general purchaser or user, and does not include "used motor vehicle".

The term "used motor vehicle" as used in the provisions of this chapter relating to "bills of sale" shall include all "motor vehicles" which have been sold or transferred by a manufacturer or his agent, an importer or his agent, a distributor, dealer, or sub-dealer in motor vehicles, duly registered as a manufacturer or dealer under the provisions of this chapter, to a general purchaser or user and which is in possession of such general purchaser or user or in possession of any subsequent purchaser or transferee of such motor vehicle.

The term "person" as used in the provisions of this chapter relating to "bills of sale" shall include the singular and plural numbers and shall embrace all individuals, whether acting on their own behalf, or as members, officers, employees, agents, or other representatives of any other individual or of any firm, co-partnership, corporation, association or artificial body of any kind or character whatsoever.

The term "manufacturer's number" shall mean the manufacturer's original number affixed to or imprinted upon the chassis or other parts of the motor vehicle frame of any motor vehicle.

The term "bill of sale" as used in this chapter shall mean the written statement or document of transfer or conveyance required to be executed and delivered by the corporation, partnership, association or per-

son, selling, giving away, transferring, conveying or passing title to a "motor vehicle" or "used motor vehicle".

HISTORY: — 109 v. 330; 110 v. 399; 111 v. 467.

One who purchases from an insurance company a policy covering on an automobile, which policy contains a provision that the underwriter shall not be liable if the insured be not the sole and unconditional owner of the automobile, may not recover damages under such policy when neither at the time of the procuring of the insurance nor at the time the liability was claimed to have arisen had the owner complied with the provisions of the act of the General Assembly relating to the registration of automobiles, found in 109 Ohio Laws, page 330.

Ohio Farmers' Insurance Co. v. Todino. 111 O. S. 274. Decided Oct. 14, 1924.

NOTE: — This section was amended in 111 v. 467.

The intention of the Legislature in the enactment of Section 6310-3, requiring the registration of automobiles and to prevent traffic in stolen cars, was to provide a regulatory statute, which would reduce the danger of theft and make easier the tracing of stolen cars and punishment of offenders; and it follows that the giving of an automobile by a husband to his wife is not such a transfer of ownership as is within contemplation of the statute, and title passes to the wife notwithstanding neglect of the formality of registration and a bill of sale.

Motion for an order directing the Court of Appeals to certify its record in this case overruled, and motion by defendant to dismiss motion to certify allowed March 17, 1925.

Alvia T. Willey, Executor, v. Margaret Jane Willey. 23 O. L. R. 305. Decided November 26, 1924.

SEC. 6310-4. (No change since 1922 edition.)

SEC. 6310-5. (No change since 1922 edition.)

SEC. 6310-6. **[Bill of sale and duplicate.]** Each buyer, purchaser, transferee or person receiving or obtaining a "motor vehicle" shall obtain from the manufacturer, or such manufacturer's agent, or the importer of such "motor vehicle", at or before such sale, conveyance or delivery, the bill of sale and duplicate as provided in section 6310-5 of the General Code and verified as provided in section 6310-9 of the General Code and shall sign thereon the name of such buyer, purchaser, transferee or person receiving or obtaining such "motor vehicle".

HISTORY: — 109 v. 331; 110 v. 399.

SEC. 6310-7. **[Execution of bills of sale in respect to sale of "used motor vehicle;" information required.]** Each corporation, partnership, association, or person, in all sales, conveyances, transfers, gifts, exchanges of, or transactions in which title to a "used motor vehicle" passes, shall execute in the presence of two witnesses a "bill of sale", in duplicate, and deliver the same to the corporation, partnership, association of person purchasing, receiving or obtaining such used motor vehicle, at or before such sale, conveyance, transfer, gift, exchange or passage of title; such "bill of sale" shall contain the name of the manufacturer or

maker, the manufacturer's number, the engine or motor number as well as any other numbers thereon, the horse-power of such motor vehicle, a general description of the body, the type and model, together with any other numbers or marks on appliances attached thereto which may tend to identify such motor vehicle; the name or names and residence or residences of each and every bona fide owner or owners of such used motor vehicle, beginning with the original or first purchaser of such used motor vehicle from the manufacturer or importer, or the direct agent or agents or either, and a record of each subsequent transaction. involving such used motor vehicle, down to the last owner, owners, or transferee from whom the corporation, partnership, association or person, selling, conveying, giving away or transferring derived title thereto; the residence or residences, so stated, shall be by city, village, township, county and state, together with the street and number or post office address, if any, of such former owner or owners, or, if there be no such addresses then by such description, designation, or information as may reasonably fix the place or places, residence or residences of such former owner or owners, and shall contain also the date and place where the ownership of said motor vehicle by the corporation, partnership, association or person selling, conveying, giving away or transferring the same began and whether he acquired title thereto by purchase from such last owner or owners, or in what manner such title was acquired, and a statement of any and all changes and alterations in the finish, design or appearance of the said used motor vehicle which had been made within the knowledge of the person making the statement.

HISTORY: — 109 v. 331; 111 v. 468.

Sec. 6310-8. **[Buyer or purchaser must obtain "bill of sale" from owner or vendor.]** Each buyer, purchaser, transferee or person receiving or obtaining a "used motor vehicle" shall obtain from the owner, vendor or person conveying or transfering such "used motor vehicle," at or before such sale, transfer, conveyance or delivery, the bill of sale in duplicate as provided for in section 6310-7 and verified as provided for in section 6310-9. In case of transfer of ownership of a "motor vehicle" or a "used motor vehicle", by inheritance, devise or bequest, or order in bankruptcy or insolvency, replevin or execution sale, re-possession upon default in the performance of the terms of the lease, conditional sale, agreement or otherwise than by the voluntary act of the owner, the "bill of sale" transferring such title as required by this chapter shall be signed by the executor, administrator, receiver, trustee, sheriff or other representative, or successor in interest of the owner in lieu of such owner, and delivered to the transferee together with all former "bills of sale" or statements of ownership, and shall set forth in addition to such other

information as is required by law to be contained in the bill of sale, the special facts in the premises.

HISTORY: — 109 v. 332; 111 v. 468.

SEC. 6310-9. (No change since 1922 edition.)

SEC. 6310-10. **[Copies to be presented to clerk of courts; duties of clerk.]** Each corporation, partnership, association, or person to whom title has in any manner been passed to a motor vehicle shall present to the clerk of courts of the county in which the sale, transfer, conveyance, gift or passage of title is consummated within three days immediately thereafter, both copies of the duplicate bill of sale. It shall be the duty of the clerk of courts to refuse to accept for filing the duplicate bill of sale if such instrument is not executed and witnessed according to the provisions of this act.

The clerk of courts shall if such instruments are properly executed and witnessed, affix his official seal and the date of the filing upon each instrument, assign to each set of duplicate bills of sale a distinctive number, which he shall stamp upon both original and duplicate and make an alphabetical index of the grantors and grantees and of the motor vehicles according to make, type and model. The clerk shall thereupon return one copy to the person presenting the bill of sale and place the others in a file to be kept by him for such purpose. Any instrument purporting to be a bill of sale, which does not bear the official seal of the clerk of courts of the county where the sale, gift, transfer, conveyance or passage of title took place shall be null and void. The clerk of courts of each county shall charge a fee of twenty-five cents for filing each duplicate bill of sale.

HISTORY: — 109 v. 333; 110 v. 399.

SEC. 6310-11. **[Unlawful to sell "used vehicle" without possession of all bills of sale.]** It shall be unlawful for a corporation, partnership, association or person to sell, convey, lease, give away, transfer or exchange, directly or through an agent, a "used motor vehicle" within this state without having in his possession and attached together one copy of all duly executed, verified and filed bills of sale, and of the sworn statement, if a sworn statement has before been filed for such "used motor vehicle" or duly certified copies thereof, and without delivering the same to the corporation, partnership, association or person receiving or obtaining such "used motor vehicle."

HISTORY: — 109 v. 333; 110 v. 400.

SEC. 6310-11a. **[Sworn statement; must be filed.]** Each corporation, partnership, association or person to whom title shall in any manner within this state be passed to a "used motor vehicle" shall obtain from the corporation, partnership, association or person from whom title shall

have been obtained, at the time or before title to such "used motor vehicle" shall be obtained, one copy of all bills of sale and the sworn statement, if a sworn statement has prior thereto been filed, for such "used motor vehicle" or certified copies thereof, and the bills of sale in duplicate required in section 6310-7 of the General Code, verified as provided in section 6310-9 of the General Code and sign on such duplicate bill of sale the name of such buyer, purchaser, transferee or person receiving title to such "used motor vehicle."

Such corporation, partnership, association or person shall thereafter present to the clerk of courts of the county in which passage of title was consummated, within three days immediately thereafter, such duplicate bills of sale and the copy of all bills of sale and sworn statements required to be obtained in this section.

The clerk of courts shall, if such instruments are properly executed and marked, affix his seal and the date of filing to the duplicate bill of sale, and make an alphabetical index of the grantors and grantees and of the motor vehicles according to make, type and model. The clerk of courts shall thereafter, if the preceding bill of sale or, in case no bill of sale has before been filed, the sworn statement was filed in his county, attach one copy of the duplicate bill of sale to the copy of the last bill of sale, or if no bill of sale has before been filed, to the sworn statement of ownership kept in his file and return all other instruments properly stamped to the person presenting such instruments to him. If the preceding bill of sale or, in case no bill of sale has before been filed, the sworn statement purports to have been filed in another county, the clerk of courts shall make a copy of all bills of sale and of the sworn statement, if one has before been filed, for his file to which one copy of the duplicate bill of sale presented to him shall be attached, and return all other instruments properly stamped to the person presenting such instruments to him. The clerk shall also report in writing to the clerk of courts of the county in which the last instrument purported to have been filed, notifying him of the sale and such clerk shall report back in case of any irregularity.

HISTORY — 110 v. 400.

SEC. 6310-12. **[Unlawful to misrepresent, etc.]** It shall be unlawful for any corporation, partnership, association or person, whether the manufacturer, importer, or agent of either, or the owner, holder, or person in possession of a motor vehicle or "used motor vehicle," conveying, transferring, delivering, giving away, selling, passing title to or attempting to pass title to such motor vehicle or "used motor vehicle," to misrepresent, in the "bill of sale" or sworn statement as required by this act, the name or names, and place or places of residence or business of the corporation, partnership, association or person executing and delivering such "bill of sale" or "sworn statement" or to forge, change or counterfeit any part thereof or to misrepresent therein the number or numbers placed

upon such motor vehicle or "used motor vehicle" by the manufacturer or otherwise misrepresent the description of the same, or to misrepresent or falsify the name or address of the corporation, partnership, association or person, purchasing, obtaining or receiving such motor vehicle or "used motor vehicle."

HISTORY: — 109 v. 333; 110 v. 401.

SEC. 6310-13. (No change since 1922 edition.)

SEC. 6310-13a. **[Lost or stolen copies; duties of clerk of court.]** In case a copy of the bill of sale or sworn statement which has been filed according to the provisions of this chapter shall be lost, stolen or destroyed, a certified copy thereof may be procured from the clerk of courts upon presentation of an affidavit showing that such bill of sale or sworn statement of ownership has been lost, stolen or destroyed and on the payment of a fee of twenty-five cents.

The clerk of courts shall, either at the time of filing a bill of sale or sworn statement of ownership, or later, upon request of an owner of a motor vehicle for which a bill of sale or sworn statement of ownership has been filed with such clerk, and upon payment of a fee of twenty-five cents issue a certificate bearing the name and seal of the clerk of courts, setting forth that such bill of sale or sworn statement of ownership has been filed, the name of the grantor and grantee of the bill of sale, or the name of the person making the sworn statement of ownership, the date of filing of such bill of sale or sworn statement of ownership and a description of the motor vehicle, including the model, type, manufacturer's number and engine number for which bill of sale or sworn statement of ownership has been filed.

The clerk of courts shall keep on hand a sufficient supply of blank forms of bills of sale and sworn statements of ownership which shall be drawn in accordance with forms approved from time to time by the attorney general and such blank forms of bills of sale and sworn statements shall, on request of any duly registered motor vehicle manufacturer or dealer or any other owner of a motor vehicle, be distributed by the clerk of courts without charge to such registered manufacturer or dealer or other persons residing within such county.

HISTORY: — 110 v. 401; 111 v. 469.

SEC. 6310-14. **[Penalty.]** Whoever violates any provisions of this act, except provisions of section 6310-12 of the General Code, shall upon conviction be subject to a fine of not less than twenty-five dollars nor more than five thousand dollars; and whoever violates any provision of section 6310-12 of the General Code shall upon conviction be fined not less than fifty dollars nor more than five thousand dollars or imprisoned not more than five years or both.

HISTORY: — 109 v. 334; 110 v. 402.

SEC. 6310-15. **[Rules of traffic.]** On any public road or highway divided longitudinally by a parkway, walk or sunken way, or viaduct, vehicles shall keep to the right of such division.

HISTORY: — 110 v. 136.

SEC. 6310-16. A vehicle passing around a circular roadway shall keep to the right from the entrance to the exit.

HISTORY: — 110 v. 136.

SEC. 6310-17. Vehicles shall keep to the right side of the road or highway except when necessary to turn to the left in crossing the road or highway or in overtaking and passing another vehicle; provided that, in passing a vehicle going in the same direction such passing shall be made as close to the right hand side of the road or highway as practicable.

HISTORY: — 110 v. 136.

SEC. 6310-18. A vehicle meeting another vehicle approaching from the opposite direction shall pass to the right.

HISTORY: — 110 v. 136.

SEC. 6310-19. A vehicle overtaking another vehicle shall signal to the vehicle to be overtaken and such vehicle shall immediately turn to the right to give the overtaking vehicle room to pass.

HISTORY: — 110 v. 136.

SEC. 6310-20. A vehicle overtaking another vehicle shall pass to the left and shall not pull over to the right until clear of the overtaken vehicle, excepting in overtaking a street car, the overtaking vehicle shall keep to the right.

HISTORY: — 110 v. 137.

SEC. 6310-21. Before backing, drivers of vehicles shall give ample warning, and while backing vigilance shall be exercised not to injure those behind.

HISTORY: — 110 v. 137.

SEC. 6310-22. Drivers of vehicles before turning, stopping or changing their course shall make sure such movement can be made in safety and shall cause signals to be made of their intention in a way visible outside the vehicle.

HISTORY: — 110 v. 137.

SEC. 6310-23. Vehicles turning to the right into another road or highway shall turn the corner as near to the right side of the road as possible.

HISTORY: — 110 v. 137.

SEC. 6310-24. Vehicles turning to the left into another road or highway shall pass to the right of and beyond the center of the intersection before turning.

HISTORY: — 110 v. 137.

SEC. 6310-25. Vehicles crossing from one side of the road or highway to the other shall turn to the left so as to head in the same direction as the traffic on the side of the road or highway toward which the crossing is made.

HISTORY: — 110 v. 137.

SEC. 6310-26. No vehicle shall stop on a road or highway facing in a direction other than the direction of travel on that side of the road or highway.

HISTORY: — 110 v. 137.

SEC. 6310-27. No vehicle shall stop on any road or highway, except with front and rear right wheels within one foot of the right hand side of the improved portion of the road, nor in any such way as to obstruct a free passage of the road; provided that nothing in this section shall be held to apply whenever a driver of a vehicle is compelled or permitted to stop by reason of other lawful regulations, or emergency.

HISTORY: — 110 v. 137.

SEC. 6310-28. "Right of way" means the right of a vehicle to proceed uninterruptedly in a lawful manner in the direction in which it is moving in preference to another vehicle approaching from a different direction into its path.

HISTORY: — 110 v. 137.

SEC. 6310-28a. Excepting where otherwise hereinafter provided the operator of a vehicle shall yield the right of way at the intersection of its path and the path of another vehicle to the vehicle approaching from the right.

HISTORY: — 110 v. 137.

SEC. 6310-29. A vehicle joining the flow of traffic on a road or highway from a standing position, an alley, a building, or private property shall yield the right of way to all other vehicles.

HISTORY: — 110 v. 137.

SEC. 6310-30. For the purpose of enforcing the road regulations referred to in this chapter, the main thoroughfare shall be understood to mean all sections of public roads and highways on which street cars or

electric cars run and also all main market and intercounty highways within the state.

HISTORY: — 110 v. 137.

Under Sections 6310-30 and 6310-32, General Code, it is mandatory that local authorities, in establishing additional main thoroughfares, shall erect appropriate signs not nearer than one hundred feet from the intersection of all highways intersecting such main thoroughfare.

The intersection of such highways is the part of the highways bounded by the curb lines or the traveled portions of such highways.

Op. Atty. Gen. No. 2890, Oct. 22, 1925.

SEC. 6310-31. Vehicles and street cars going on main thoroughfares shall have the right of way over those going on intersecting thoroughfares.

HISTORY: — 110 v. 138.

SEC. 6310-32. Local authorities shall have the right to designate by ordinance or resolution additional main thoroughfares and to designate what vehicles shall have the right of way at intersections of main thoroughfares; provided, however, that legible and appropriate signs be erected not nearer than 100 feet from the intersection along all roads and highways intersecting such main thoroughfares.

HISTORY: — 110 v. 138.

See Opinions of Attorney General No. 2890, Oct. 22, 1925, cited under Sec. 6310-30.

SEC. 6310-33. Drivers shall have a clear and unobstructed view to the front and to both sides of their vehicles and shall have a clear view to the rear of their vehicles by direct view or by mirror.

HISTORY: — 110 v. 138.

SEC. 6310-34. Where crosswalks or cinder paths parallel the public road or highway pedestrians shall not walk in, along or upon the vehicular traveled portion of such public road or highway, except at crossings and crosswalks, except in cases where crossings or crosswalks are an unreasonable distance apart.

HISTORY: — 110 v. 138.

SEC. 6310-35. Pedestrians and drivers of vehicles shall obey and abide by all signals, signs, whistles and directions of police officers.

HISTORY: — 110 v. 138.

SEC. 6310-36. Pedestrians shall not step into or upon a public road or highway without looking in both directions to see what is approaching.

HISTORY: — 110 v. 138.

SEC. 6310-37. **[Penalty.]** Whoever violates any provision of General Code 6310-15 to 6310-40, respectively, shall be fined not more than $25.00 and for a second offense shall be fined not less than $25.00 nor more than $100.00.

HISTORY: — 110 v. 138.

SEC. 12603. **[Speed limits.]** Whoever operates a motor vehicle in and upon the public roads or highways at a speed greater than is reasonable and proper having regard for the width, traffic, use and the general and usual rules of such road or highway, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined as hereinafter provided. A rate of speed greater than fifteen miles an hour in the business or closely built-up portions of a municipal corporation or more than twenty-five miles an hour in other portions thereof, or more than thirty-five miles an hour outside of a municipal corporation, shall be prima facie evidence of a rate of speed greater than is reasonable and proper.

HISTORY: — 99 v. 543; 108 v. Pt. I, 471; 110 v. 138.

Evidence tending to prove that the accused was driving his automobile at a high rate of speed a short distance from the scene of the accident is competent.

Where it is established by the evidence that the accused operated his automobile in violation of the statute as charged, and that such illegal act was the proximate cause of the injury and death of decedent, the fact that the decedent was guilty of negligence contributing to his death would not constitute a defense.

Prince v. State, 12 Ohio App. 347.

Section 12603, General Code, as amended in 108 Ohio Laws, pt. 1, 471, making it unlawful to operate a motor vehicle at an unreasonable speed, is constitutional.

The court may in the exercise of its discretion in a criminal case give one or more special charges requested by counsel before argument, and refuse others.

O'Mara v. State, 16 Ohio App. 62.

Under the provisions of Section 12603, General Code, limiting the speed of motor vehicles, a speed that is reasonable and proper must be measured by the circumstances and conditions the statute specifies, and a speed may be violative of the statute although less than the maximum rate named therein.

Under such statute the question whether the speed at a particular point was reasonable and proper is primarily one for the jury.

Waite Taxi Co. v. McGrew, 16 Ohio App. 219.

The Cleveland traffic ordinance, interpreted under the rule of reason, required that a motor vehicle be operated with the degree of care which an ordinarily prudent person would exercise in view of the use and width of the street over which the machine is passing, together with traffic conditions and other circumstances at the time existing in that particular locality; and when a conviction of reckless driving is based solely on the testimony of a policeman to the effect that the prescribed rate of speed was being exceeded, without any consideration being given to the surrounding circumstances, there is a failure to meet the requirements of the law and a reversal should be entered.

While presumptive evidence authorizes it does not require conviction, which must always be based on evidence that satisfies the court beyond a reasonable doubt of the guilt of the accused.

Warren v. City of Cleveland. 22 O. L. R. 483. Decided March 12, 1923.

1. It is error for a court, in its charge to the jury in a negligence case, to undertake to lay down a rule of conduct relating to specific acts involved and state which of such acts would constitute negligence or contributory negligence that would bar recovery.

2. In an action against the owner and driver of an automobile for the wrongful death of a guest who was riding with defendant at the time of the accident, alleged to be due to the excessive speed and negligent operation of the car, it is prejudicial error for the court to charge the jury that if they find that decedent, at the time of and prior to the accident, acquiesced and consented to the speed at which the automobile was being driven, they should disregard speed as a possible element of negligence, and that if they find there was no acquiescence they should consider the question of speed in determining whether there was negligence, where contributory negligence is not pleaded as a defense and there is neither evidence to raise a presumption of contributory negligence nor any evidence that decedent acquiesced in or consented to the rate of speed.

Lindeman, Admx., v. Roche. 18 Ohio App. 366. Decided May 14, 1923.

1. That part of Section 12603, General Code, which provides what rate of speed shall be presumptive evidence of a speed greater than is reasonable, read in conjunction with the other parts of the section, prescribes a rule of conduct.

2. A personal injury was sustained upon February 4, 1923, in an automobile accident within a municipality, but outside the business or closely built-up portions thereof. Upon February 4, 1923, section 12603, General Code, provided that "a rate of speed greater than fifteen miles an hour in the business or closely built-up portions of a municipality, or more than twenty miles an hour, in other portions of a municipality, shall be presumptive evidence of a speed greater than is reasonable." Upon July 26, 1923, an amendment to Section 12603, General Code, became effective, changing the section so as to provide that "a rate of speed * * * more than twenty-five miles an hour in other portions" of a municipality, shall be presumptive evidence of a speed greater than is "reasonable."

3. An action growing out of the accident was begun in the court of common pleas upon November 13, 1923. *Held,* that it was not error for the trial judge to charge the jury that the provisions of Section 12603 as they existed upon February 4, 1923, prior to the effective date of the amendment, were to be applied in reaching their verdict.

Psaris v. Fredericks. 113 O. S. ——. Decided June 3, 1925.

In a prosecution under an indictment for unintentional homicide, wherein a violation of Section 12603, General Code, providing that "whoever operates a motor vehicle * * * * at a speed greater than is reasonable or proper, having regard for width, traffic, use and general and usual rules of such road * * * * shall be fined," etc, is relied upon as the "unlawful act" committed, and valid ordinance defines the general and usual rules of the road in the locality where the killing occurred, the ordinance is competent to be introduced in evidence as proof of the general and usual rules of the road, or as an element of the proof that an unlawful act was committed. (State v. Born, 85 O. S., 430 disapproved and overruled.)

State v. O'Mara — 105 O. S. 94.

It is a general rule that any person of ordinary intelligence who has had an opportunity for observation, is competent to testify as to the rate of speed of a moving automobile the qualifications of the witness to judge accurately going to the weight which the jury may give his testimony rather than to its competency. Un-

less an abuse of discretion appears in permitting an expression of such opinion no prejudicial error intervenes.

State v. Auerbach — 108 O. S. 96.

There is no presumption of negligence as against either party to an accident except such as arises upon the facts proved.

Where the driver of an automobile is killed at the intersection of two streets in a village by collision with an interurban car, which is running at a rate of speed which violates the village ordinance, and the plaintiff's evidence affords no proof whatever as to the speed at which the decedent was driving his automobile, nor as to his conduct immediately preceding the accident, it is error for a reviewing court to reverse a judgment for plaintiff upon the ground that a clear presumption of contributory negligence arises from plaintiff's evidence.

A traveler upon a street in a village crossing the track of an interurban railway has a right to presume that the interurban railway will conform to an ordinance of the city council prohibiting the running of interurban cars through its limits at a rate of speed greater than that named in the ordinance. If the traveler acts in accordance with such presumption in the absence of knowledge of the fact that the interurban railway company is exceeding such speed limit in running an interurban car, such action upon the part of the traveler will not of itself constitute an act of negligence. (Hart v. Devereux, Receiver, 41 O. S., 565, approved and followed).

Norris v. Jones — 110 O. S. 598.

SEC. 12603-1. **[Safety.]** Whoever operates a motor vehicles on the public roads or highways without due regard for the safety and rights of pedestrians and drivers and occupants of all other vehicles, and so as to endanger the life, limb or property of any persons while in the lawful use of the roads or highways shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined as hereinafter provided.

HISTORY: — 110 v. 138.

SEC. 12603-2. **[Penalty.]** Any person upon being found guilty of violating section 12603 or section 12603-1 shall, for a first offense thereof, be fined not less than $10.00 or more than $100.00; and for a second offense, not less than $25.00 or more than $100.00, or imprisoned in the county jail or workhouse not more than ten days, or both; and for a third offense, shall be fined not less than $50.00 or more than $200.00, or imprisoned in the county jail or workhouse not less than ten days or more than thirty days, or both, provided, further, that when any person is found guilty of a first offense for violation of section 12603 upon a finding that he operated a motor vehicle faster than twenty-five miles an hour in the business or closely built-up portions of a municipal corporation or faster than thirty-five miles an hour in other portions thereof, or faster than forty-five miles an hour outside of a municipal corporation, the court trying the same may, in addition to the penalty herein provided, sentence such offender to the county jail or workhouse for not more than five days.

HISTORY: — 110 v. 139.

SEC. 12604. (Repealed 108 v. Pt. 1, 472.)

SEC. 12605. (No change since 1922 edition.)

SEC. 12606. (No change since 1922 edition.)

SEC. 12607. (No change since 1922 edition.)

SEC. 12607-1. (No change since 1922 edition.)

A city cannot incorporate into an ordinance a provision taking away the certificate to operate a motor vehicle granted by the state, though a provision prohibiting the owner of such certificate from operating a motor vehicle within the city limits would be valid. Op. Atty. Gen. No. 2780, Sept. 12, 1925.

SEC. 12607-2 to 12614-1. (No change since 1922 edition.)

SEC. 12614-2. **[Dimming headlights on motor vehicles; penalty.]** Whoever, being the driver of any motor vehicle upon the highways of the state in the night season, fails, upon the approach of another vehicle, to control the headlights by dimming or otherwise on such motor vehicle, so that at a distance of not less than two hundred feet in front of such vehicle, no part of the intensified rays of light shall be visible more than three and one-half feet above the surface of the highway, and remain so until the approaching vehicle passes by, shall be fined not more than twenty-five dollars for the first offense, and not less than fifty dollars nor more than one hundred dollars for each subsequent offense. The provisions of this section shall not exempt motor vehicles equipped with approved non-glare lenses defined in section 6310-1 of the General Code.

HISTORY: — 110 v. 129.

If the night is so dark that the operator of an automobile must depend upon the light from his machine to see the condition of the highway, he is operating his machine negligently unless it is under such control that he can stop or avoid an obstruction, or traffic thereon, within the range of the light produced by the lamps on his automobile.

The operator of an automobile is not excused from the requirements of the above principle when the lights on his machine are dimmed while passing other machines under the provision of Section 12614-1, General Code (107 O. L. 540).

In the absence of a statutory requrement it is not negligence per se for a person driving cattle on the public highway in the night season to fail to carry lights, but it is a fact for the jury to determine under the evidence whether a person doing so is in the exercise of ordinary care.

Webster v. Pollock, 15 Ohio App. 102.

NOTE: — The subject matter formerly in Section 12614-1 of the General Code is now found in Section 12614-2.

It is a duty of a driver of an automobile to stop his car when for any reason he cannot see where he is going.

Where a petition recites that plaintiff was blinded by the lights of an approaching machine so as to be unable to see the street ahead of him, and that while so driving he collided with another machine negligently left in the street,

the contributory negligence of the plaintiff is apparent and there is nothing to submit to the jury.

Buddenberg v. Kavanagh, 17 Ohio App. 252.

SEC. 12614-3 to 12618-4. (No change since 1922 edition.)

SEC. 12619. **[Taking or operating motor vehicle without owner's consent.]** Whoever steals any motor vehicle, or whoever purposely takes, drives or operates any motor vehicle without the consent of the owner thereof, or buys or conceals any motor vehicle that has been stolen, knowing it to have been stolen, or knowingly conceals a person who has stolen any motor vehicle, shall, for the first offense, be imprisoned in the penitentiary not less than one year nor more than twenty years, and for each subsequent offense not less than five years nor more than thirty years.

HISTORY: — 99 v. 544; 103 v. 524; 110 v. 58.

Upon conviction of one charged with stealing an automobile in violation of Section 12448, General Code, it is essential for the verdict to state the value of the property stolen, as provided in Section 13691, General Code, and a failure to do so constitutes reversible error.

It is prejudicial error for the trial court, in a prosecution for larceny, to charge the jury that the unexplained possession of property recently stolen constitutes, in law, prima facie evidence of larceny.

Doe v. State, 14 Ohio App. 178.

Where an insurance policy indemnifies an automobile owner against loss by theft, and excepts conversion by a mortgage, or vendee in possession, the insurer is liable for embezzlement by a bailee.

Indemnity Co. v. Meyer, 18 Ohio App. 97.

NOTE: — This section now contains the subject matter, relative to stealing motor vehicles, formerly found in Section 12448.

SEC. 12619-1 to 12628-1. (No change since 1922 edition.)

CHAPTER XIII

Public Funds

SEC. 2288-2. **[Certification of balance required before contract.]** It shall be unlawful for any officer, board or commission of the state to enter into any contract, agreement or obligation involving the expenditure of money, or pass any resolution or order for the expenditure of money unless the director of finance shall first certify that there is a balance in the appropriation pursuant to which such obligation is required to be paid, not otherwise obligated to pay precedent obligations.

HISTORY — 107 v. 457; 109 v. 130.

See 112 O. S. 356, as cited under Sec. 154-48.

SEC. 2295-6. **[Definition of terms used.]** Definitions—The following definitions shall be applied to the terms used in this act:

(a) "Political subdivision" shall mean any political subdivision or taxing district of the state incurring indebtedness or issuing bonds on the general credit of the political subdivision or taxing district;

(b) "Charter municipality" shall mean any municipality which at the time of incurring any indebtedness or issuing any bonds is operating under a charter framed and adopted under the provisions of Article XVIII of the constitution of Ohio;

(c) "Fiscal officer," in the case of a county, shall be the county auditor; in the case of a charter municipality, such officer as by virtue of the charter has the duties and functions provided in section 4284 of the General Code of Ohio; in the case of any other city, the city auditor, and of any other village, the village clerk; in the case of a school district, the clerk of the board of education; in the case of a township, the auditor of the county in which such township is located; in the case of any other political subdivision, the officer who by law performs the duties and functions similar to those of a city auditor;

(d) "Serial bonds" are those which provide for the retirement of the indebtedness by means of installment maturities in lieu of a sinking fund;

(e) The "bond-issuing authority" shall, in the case of any bond issue, be the county commissioners, board of education, township trustees, city council or other board or officer who, under the provisions of law or charter, has the function of determining upon the issuance of such bonds.

HISTORY: — 109 v. 836.

SEC. 2295-7. **[Subdivisions shall not incur indebtedness for current operating expenses.]** No county, school district, township, municipality, including charter municipalities, or other political subdivision shall, with the exceptions hereinafter named, create or incur any indebtedness for current operating expense. The acquisition or construction of any property, asset or improvement with an estimated life or usefulness of less than five years shall be deemed current expense. This prohibition shall not apply to borrowing as provided by law in anticipation of collection of special assessments or in anticipation of special assessments or current revenues or for defraying the expenses of an extraordinary epidemic of disease or emergency expenses made necessary by sudden casualty which could not have reasonably been foreseen or for deficiencies created by enjoined taxes as provided in section 5659-1 of the General Code or for paying final judgments upon non-contractual obligations as provided in section 4 thereof. The estimate of the life of the property, asset or improvement proposed to be acquired or constructed from the proceeds of any bonds, shall be made in any case by the fiscal officer of the subdivision and certified by him to the bond-issuing authority and shall be binding upon such authority.

HISTORY: — 109 v. 336.

SEC. 2295-8. **[When bonds may be isued to pay final judgment.]** When the fiscal officer of any county or other political subdivision, including charter municipalities, certifies to the bond-issuing authority that, within the limits of its funds available for the purpose, the subdivision is unable, with due consideration of the best interests of the subdivision, to pay a final judgment rendered against the subdivision in an action for personal injuries or based on other non-contractual obligation, then such subdivision may issue bonds, in an amount not exceeding the amount of the judgment and carrying interest not to exceed six per cent, for the purpose of providing funds with which to pay such final judgment. Providing also that when the fiscal officer of any such subdivision certifies to the bond issuing authority that, within the limits of its funds available for the purpose, the subdivision is unable with due consideration of the best interests of the subdivision, to pay a final judgment rendered against the subdivision in an action based upon an obligation of a contractual nature incurred prior to the fourteenth day of May, 1921, and reduced to judgment prior to the passage of this act, then said political subdivision may issue bonds in an amount not exceeding the amount of the judgment and the interest due thereon, and carrying interest not to exceed six per cent for the purpose of providing funds with which to pay such final judgment.

HISTORY: — 109 v. 337; 110 v. 160.

SEC. 2295-9. **[Periods beyond which bonds issued by subdivisions may not run; classification.]** That the maturities of bonds, notes or other evidence of indebtedness issued by counties and other political subdivisions, including charter municipalities, shall not extend beyond the following limitations as specified in the following classifications, the period to be measured from a date twelve months prior to the date of the earliest maturity, if maturing in annual installments, or six months prior thereto, if maturing in semi-annual installments:

When issued for —

Class (a) The acquisition of real estate or easements or other interests in real estate, grade crossing elimination, and flood prevention, thirty years;

Class (b) The construction or improvement of fire-proof buildings or other structures, widening of roads, highways, streets or alleys, general waterworks improvements, sanitary and storm sewers, sewage disposal works, and bridges, twenty-five years;

Class (c) The construction or improvement of non-fireproof buildings or other structures, electric light plant and equipment, police and fire alarm and telegraph systems, fifteen years;

Class (d) Waterworks meters, fire apparatus, road rollers, furniture and furnishings, machinery and garbage disposal plant, landscape planting, playground apparatus, sidewalks, curbs, gutters, and the construction. reconstruction, resurfacing, grading, or drainage of roads, highways, streets, or alleys, or improvements thereof by boulevard or white-way lighting system, ten years;

Class (e) Motor vehicles other than fire apparatus, wagons and horses, bonds issued to pay judgments for personal injuries or other non-contractual obligations and also for defraying the expenses of an extraordinary epidemic of disease, five years;

Class (f) Lighting, sprinkling, sweeping or cleaning of streets or other public places or other service for which municipal corporations or other political subdivisions are authorized by law to levy special assessments, one year;

Class (g) Purposes not included in the foregoing clauses, such number of years not exceeding thirty as is the estimated period of usefulness of the asset, improvement, or other purpose, such estimate to be made by the fiscal officer;

Class (h) A single bond issue for a purpose which includes two or more of the foregoing classes, the average number of years of usefulness as measured by the weighted average of the amounts proposed to be expended for said several classes in accordance with above table of maturities; such estimating and calculation of average to be made by the fiscal officer.

HISTORY: — 109 v. 338; 110 v. 456.

The provisions of Sections 2295-9 and 2295-10 of the General Code limiting the maturities of bonds issued for particular purposes by subdivisions of the state must be complied with as to all bonds issued after January 1, 1922, though legislation authorizing their issuance may have been fully adopted prior to that date.

Op. Atty. Gen. (1922), p. 427.

The ordinances, resolutions, measures and proceedings mentioned in Section 23 of the Griswold Act (109 O. L., 336-348) refer to legislative acts, and the word "proceedings" has no reference to administrative acts necessary to be performed in executing the legislative will.

Where all legislation of a municipality necessary for street improvements has been fully completed before January 1, 1922, such legislation including authorization of bonds in anticipation of assessments upon abutting property to pay for such improvements, but such bonds are not actually sold and delivered until after January 1, 1922, the provisions of Section 6 of the Griswold Act, Section 2295-9, General Code, do not apply, and, where the legislation so provides, such bonds may be made to mature more than ten years after the date of execution and delivery.

State, ex rel. v. Chandler, 105 O. S. 499.

NOTE: — Section 2295-9 was amended in 110 v. 456.

SEC. 2295-10. **[Certification of maximum indebtedness by fiscal officer before passage of ordinance, resolution, etc., for issue of bonds.]** Before any resolution, ordinance or other measure providing for the issuance of bonds, notes or other evidences of indebtedness of any county or other political subdivision, including charter municipalities, is passed or adopted, the fiscal officer thereof shall certify to the bond-issuing authority the maximum maturity of such bonds or indebtedness, calculated in accordance with the provisions of the foregoing section, and no such bonds, notes or other evidences of indebtedness shall be authorized or issued with maturities extending beyond the maturities as thus certified by such fiscal officer. Where the proposed indebtedness falls within class (h), such certification shall also contain a schedule of the respective amounts of the proposed bonds falling within each of classes (a) to (g) inclusive. The amount expended from the proceeds of the bonds for any purpose or purposes falling within any class shall not exceed the amount allotted in said schedule to said class; provided, however, that whenever the bond-issuing authority deems such transfer to be necessary for the carrying out of the purpose of the bond issue, then such authority may transfer any unexpended portion of the amount allotted to any class from the class to which it was originally so allotted to any class with a longer maturity and, upon such transfer, the amount expended for any purpose or purposes falling within the class to which such transfer has been authorized may include the amount so transferred; but no transfer may be made from any class to a class with a shorter maturity. Each such certificate shall state whether or not the asset, property, construction or improvement has an estimated life or usefulness of at least five years; and the provisions of section 2295-7 of the General Code shall apply to any asset, property, construction or improve-

ment certified as having an estimated life or usefulness of less than five years.

HISTORY: — 109 v. 338; 110 v. 457.

SEC. 2295-11. **[What cost of construction may include.]** The cost of construction of any building, utility or improvement may be construed to include interest payable during construction on bonds issued for such construction. A sum not to exceed one year's interest on any bond issue may be included in the amount of the issue to the extent necessary to care for interest maturing previous to the receipt of the taxes or assessments from which such interest is to be ultimately paid.

HISTORY: — 109 v. 343.

SEC. 2295-12. **[Maturities of certain bonds.]** All bonds hereafter issued by any county, municipality, including charter municipalities, school district, township or other political subdivison, shall be serial bonds maturing in substantially equal semi-annual or annual installments. If issued with semi-annual maturities the first installment shall mature not earlier than the first day of March next following the fifteenth day of July next following the passage of the ordinance or resolution authorizing such bonds; and if issued with annual maturities, the first installment shall mature not earlier than the first day of the second September next following said fifteenth day of July. In either case the first installment shall mature not later than eleven months after said earliest date thereof.

HISTORY: — 109 v. 344; 110 v. 459; 111 v. 88.

SEC. 2295-13. **["Judgment fund," transfer to.]** All moneys collected from taxes or other sources for the payment of final judgments against the political subdivision (other than condemnation of property cases) shall go into a separate fund of the subdivision, to be known as "judgment fund". The treasurer of the political subdivision shall receive all taxes, assessments and moneys collected for the payment of final judgments against the political subdivision or proceeds of bonds issued for such purpose and invest and disburse them in the manner provided by law and shall have charge of and provide for the payment of all such judgments.

HISTORY: — 109 v. 345; 110 v. 460.

SEC. 2295-14. **[Sinking fund officers continue to exercise powers until outstanding bonds are retired.]** The board of sinking fund trustees of any county or muncipality or the board of sinking fund commissioners of any school district shall continue to exercise the powers provided in sections 2976-18 to 2976-27 inclusive, 4511 to 4522 inclusive, 3932 and 7613 to 7619 inclusive of the General Code and all other

provisions of law relating to its powers, until all outstanding bonds of such county, municipality or school district issued previous to January 1, 1922, shall have been paid; and thereupon it shall be deemed to be abolished and its functions and powers relating to the purchase and sale of securities, receipt, deposit and investment of taxes, assessments and other funds raised for the payment of bonds and funded debts, the application of such funds to the payment of bonds and other indebtedness and all its other powers and functions as set forth in said provisions of law as amended in this act shall be deemed to be transferred to the treasurer of the county, municipality or school district, and all moneys, securities and other assets then in the custody and possession of such board shall be transferred and delivered to such treasurer. Thereafter all said moneys, securities and assets and all moneys received by the county, municipality or school district for the payment of the interest and principal of its bonds or other funded debts and all inheritance taxes and all other taxes and revenues which were theretofore payable, by virtue of provision of law, into its sinking fund shall be paid to its treasurer and placed and held by him in a separate fund to be known as "bond payment fund" and, subject to the provisions of law relating to transfer to other funds, said fund shall be applied by him to the purposes for which the sinking fund had theretofore been applicable.

HISTORY: — 109 v. 347; 110 v. 460.

The Griswold act does not apply to bonds, the legislation or administrative action authorizing the issuance of which was complete and effective prior to January 1, 1922.

Bonds of the character above described are to be regarded as sinking fund bonds within the meaning of Section 20 of the Griswold act, Section 2295-14 of the General Code, and other similar provisions of that act; so that so long as any such bonds which have been issued remain outstanding, the local sinking fund authorities provided for by the law as it existed prior to the enactment of the Griswold act, are to continue to exercise their respective functions, though such bonds were issued after January 1, 1922.

Op. Atty. Gen. (1922), p. 671.

NOTE: — Section 2295-14 was amended in 110 v. 460.

Until all bonds outstanding on the first day of January, 1922, are retired, municipal, school district and county sinking fund trustees and commissions continue to exist and have full charge of the payment of all bonds issued by their respective subdivisions regardless of the date of issuance, with authority to manage and invest the funds raised by taxation for such purposes.

The treasurer of the subdivision does not succeed to any of the functions of the former sinking fund authorities of his subdivision either with respect to bonds issued prior to January 1, 1922, or with respect to bonds issued after that date until all bonds outstanding on the first day of January, 1922, have been retired and the "bond payment fund" provided for by Section 2295-14 G. C. does not come into existence as such until such bonds have been retired. Until such time it is the duty of bond issuing authorities, such as the county commissioners, to continue to offer all bonds to the sinking fund authorities under statutes requiring such offer

to be made. The treasurer of the subdivision is not authorized to purchase such bonds nor otherwise to control the proceeds of bond retirement levies until the sinking fund authorities go out of existence, at which time he will succeed to the functions, and the bond issuing authorities must thereafter offer the bonds issued by them to such treasurer.

Op. Attorney General (1922), p. 626.

SEC. 2295-15. **[Powers of trustee of railways, regarding bonds and sinking fund.]** None of the provisions of section 2295-9 or 2295-12 shall apply to the bonds issued or to be issued on account of the line or railway constructed under the authority of the "Act relating to cities of the first class, having a population exceeding one hundred and fifty thousand inhabitants", passed May 4, 1869, and acts supplementary thereto and amendatory thereof; provided, however, that the issuance of sinking fund bonds on account of the said railway shall not affect or postpone the abolition of the sinking fund trustees of the city as provided in section 2295-14 of the General Code and after such abolition the rentals accruing on account of said railway shall be paid to the treasurer of the city and said treasurer shall maintain and apply the sinking fund charges accruing upon bonds issued for such purposes as provided in said section 2295-14 of the General Code.

HISTORY — 109 v. 347; 110 v. 460.

SEC. 2976-26. **[When tax rate certified.]** On or before the first Monday in May of each year, the trustees of the sinking fund shall certify to the board of county commisisoners the rate of tax necessary to provide a sinking fund for the payment at maturity of bonds heretofore issued by the county and for the payment of interest on said bonded indebtedness. The amount so certified shall be set forth in the annual budget of the county commissioners without diminution.

HISTORY: — 108 v. Pt. I, 701; 109 v. 345.

SEC. 5630-1. **[Bonds, notes, etc., issued by county commissioners in anticipation of special assessments.]** Bonds, notes or certificates of indebtedness issued by county commissioners in the manner provided by law in anticipation of the collection of special assessments levied or to be levied against the property abutting upon a proposed improvement or to be benefited thereby, or in anticipation of the collection of taxes upon the taxable property of any township, or townships, of the said county within which such improvement is to be made, shall be full, general obligations of such county, for the payment of the principal and interest of which, when due, the full faith, credit and revenues of such county shall be pledged.

HISTORY: — 106 v. 495; 109 v. 166; 110 v. 459.

SEC. 5654-1. **[Money may be borrowed in anticipation of the**

issuance of bonds.] Whenever the county commissioners of any county, the township trustees of any township, or the board of education of any school district, have duly authorized the issuance of bonds for the construction or improvement of roads, bridges, school houses, or other public buildings, such bond issuing authority may borrow money in anticipation of the issuance of such bonds in an amount not exceeding the estimated cost of such construction or improvement, and not exceeding the amount of bonds so authorized, and issue the notes of such political subdivision as evidencing such indebtedness. The notes shall be made payable at a time not more than one year from their date and bear interest at not more than six per centum per annum. Such notes shall be the full general obligations of the political subdivision authorizing the same and for the payment of the same, the full faith, credit and revenues of such political subdivision shall be pledged. Prior to the issuance of such notes the resolution authorizing the issuance of the bonds anticipated by such notes, shall be certified to the county auditor and a tax for such bonds included in the annual budget as required by law. The bonds shall not be advertised for sale nor issued until the contract is let and shall be issued in an amount not exceeding the full amount of the accepted bid by more than the estimated amount of such other items of cost as may be legally included in the total cost of such construction or improvement; provided, however, that where such issue of bonds is for the furnishing of a building, as well as the construction or improvement of the same, and a contract for such furnishings cannot be let in time to make the bonds available for the payment of the notes issued for the construction of such building, the estimated cost of such furnishings may be used in lieu of the contract cost of the same. If the cost as thus determined is less than the amount of the bonds as previously authorized, the resolution authorizing such bonds shall be amended so as to reduce the issue, and a copy thereof certified to the county auditor. Taxes levied for the retirement of said bonds and assessments levied to defray, in whole or in part, the cost of such construction or improvement and anticipated by said bonds, shall thereafter be reduced to the extent required by the reduction of such bonds. The par value received from the sale of said bonds and any excess funds resulting from the issuance of said notes shall be used to retire said notes.

HISTORY: — 111 v. 494.

The mandatory provisions of House Bill No. 316, passed by the 86th General Assembly, providing that the bonds cannot be advertised for sale nor issued until the contract is let, require the issuance of notes as provided in said act, to provide available funds for the issuance of the certificate of the fiscal officer as required by Senate Bill No. 94, that such funds are available to let the contract.

The authorized bonds may be advertised for sale and issued as soon as the contract is let for the improvement.

Section 2295-11, General Code, provides that not to exceed one year's interest

may be included in the cost of construction of any building, utility, or improvement. Such amount of interest may be included in the estimate for such improvement and included in the authorized issue and paid out of the proceeds of the sale of the bonds, or from any excess left from the issue of notes.

The provision of House Bill No. 316, "such other items of cost as may be included in the total cost of construction," includes interest on notes issued, inspection, compensation and damages, and supplementary contracts under Section 6948 G. C., but does not include advertising and printing bonds, except in the case of assessment bonds.

In cases of an unforeseen contingency, as provided in Section 6948, General Code, contracts for extra work may be paid from the proceeds of notes to the extent that any surplus exists from said issue after the payment of all items of estimated cost, but to no greater extent.

Contracts can only be let to the extent that notes providing funds to pay the same have been sold and in process of delivery. An issue of notes, following an authorized bond issue, may be sold in installments in cases where the contracts can be let for amounts equal to or for less than that for which the notes have been sold and in process of delivery. The notes may also be authorized by resolution to bear different dates of issue.

Section 6948-1, General Code, provides that county commissioners may provide for road improvements by force account. When the estimated cost of construction or repair of roads is in excess of three thousand dollars per mile, county commissioners may provide that such improvement shall be made by force account after inviting and receiving competitive bids.

The Director of Highways is required under Section 1224, General Code, as amended in House Bill No. 339, to proceed by contract let to the lowest and best bidder after advertisement in all cases where the total expenditure exceeds three thousand dollars per mile.

Op. Atty. Gen. No. 2800, Sept. 24, 1925.

SEC. 5655. **[Boards of education, county commissioners, etc., may borrow money and issue certificates of indebtedness in anticipation of current revenues.]** In anticipation of the collection of current revenues in any fiscal year, the county commissioners of any county, the board of education of any school district or the township trustees of any township may borrow money and issue certificates of indebtedness therefor, but no loans shall be made to exceed the amount estimated to be actually received from taxes and other current revenues for such fiscal year, after deducting all advances. The sums so anticipated shall be deemed appropriated for the payment of such certificates at maturity. The certificates shall not run for a longer period than six months nor bear a greater rate of interest than six per cent and shall not be sold for less than par with accrued interest. The proceeds of any such certificates shall be used only for the purposes for which the anticipated revenues or taxes were raised, collected or appropriated. No political subdivision or taxing district shall borrow money or issue certificates in anticipation of the February tax settlement before January 1 of the year of such tax settlement.

HISTORY: — 109 v. 337; 111 v. 879.

SEC. 5656. Repealed 110 v. 326.

SEC. 5657. **[Power to issue new bonds, when.]** When the trustees of a township, board of education of a school district or commissioners of a county have issued bonds subject to call or redemption previous to the maturity thereof, and it appears to said trustees, board or commissioners to be for the best interest thereof to exercise such privilege of call or redemption by means of the refunding of such undebtedness at a lower rate of interest than is provided in said bonds, then such trustees, board or commissioners may issue for that purpose new bonds with semiannual interest coupons attached which shall not in any case exceed in amount the outstanding bonded indebtedness subject, as aforesaid, to call or redemption and proposed to be called, redeemed and refunded. The maturity of the bonds so issued shall not extend beyond the time of the maturity of the called, redeemed and refunded bonds.

HISTORY: — R. S. § 2834a; 93 v. 233; 97 v. 514; 109 v. 340.

SEC. 5660. **[Expenditures authorized only on certificate of fiscal officer.]** No expenditure, excepting from the proceeds of bonds, shall be made unless authorized by appropriation both as regards purpose and amount, nor shall any expenditure be made from the proceeds of bonds unless duly authorized or directed. No contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds from whatsoever source derived, shall be made or assumed by any authority, officer, or employee of any county or political subdivision or taxing disrtict, nor shall any order for the payment or expenditure of money be approved by the county commissioners, council or by any body, board, officer or employee of any such subdivision or taxing district, unless the auditor or chief fiscal officer thereof first certifies that the money required to meet such contract, agreement or other obligation,, or to make such payment or expenditure has been lawfully appropriated or authorized or directed for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification, which certificate shall be filed with such authority, officer, employee, commissioners, council, body or board, or the chief clerk thereof. The sum so certified shall not thereafter be considered unencumbered until the county, subdivision or district is discharged from the contract, agreement, or obligation or so long as the order is in force. Taxes and other revenues in process of collection or the proceeds to be derived from lawfully authorized bonds, notes, or certificates of indebtedness sold and in process of delivery shall, for the purposes of this section, be deemed in the treasury or in process of collection and in the appropriate fund.

This section shall not apply to the investment of sinking funds by the trustees of such funds. In the case of contracts running beyond the termination of the fiscal year in which they are made for salaries of educa-

tional employees of boards of education, or for street lighting, collection or disposal of garbage or other current services for which contracts may lawfully be made extending beyond the end of the fiscal year in which made, or to the making of leases the term of which runs beyond the termination of the fiscal year in which they are made, the certification of the auditor or chief fiscal officer as to money in the treasury or in process of collection, above required as a condition precedent to the making of such contract or lease shall be deemed sufficient if such certification cover the money required to meet such contract or lease throughout the fiscal year in which such contract or lease be made; provided further that in each subsequent fiscal year in which such contract or lease is in effect the auditor or fiscal officer shall make a certification for the amount required to meet the obligation of such contract or lease maturing in such year. In all such contracts or leases, the amount of the obligation remaining unfulfilled at the end of a fiscal year and which will become payable during the next fiscal year shall be included in the appropriations for such next year.

The above-mentioned certificate as to money in the treasury shall not be required for the making of contracts on which payments are to be made from the earnings of a publicly operated public utility; but in the case of any such contract made without such certification of the auditor or other fiscal officer, no payment shall be made on account thereof, and no claim or demand thereon shall be recoverable except out of the said earnings.

HISTORY: — R. S. § 2834b; 93 v. 218; 99 v. 520; 101 v. 37; R. & E. 111 v. 375.

See Opinions of Attorney General (1924), p 271, cited under Sec. 1200.

See Opinions of Attorney General (1925) No. 2839, cited under Sec. 1214.

See Opinions of Attorney General (1925) No. 2547, cited under Sec. 8863.

The provision of Section 5660, General Code, that no contract or obligation involving the expenditure of money may be entered into by the public officials there designated unless the officer named first certifies that the money required is in the treasury to the credit of the fund from which it is to be drawn, is mandatory, and the making of such certificate is a prerequisite to the execution of a valid contract, but it is not essential to the validity of such contract that the certificate be recorded.

State v. Kuhner & King, 107 O. S. 406.

SEC. 5660-1. Nothing contained in Section 5660 of the General Code shall be construed to require a separate certificate of the auditor or chief fiscal officer for each item of expenditure, but such certificates may be issued by the auditor or chief fiscal officer, certifying that a certain sum of money has been lawfully appropriated or authorized, or directed for a certain purpose and is in thhe treasury, or in the process of collection, to the credit of a certain fund free from previous and then outstanding obligations, or certifications, and thereafter for said purpose and from said fund over a period not exceeding three months

and not extending beyond the end of a fiscal year, several expenditures may be made, orders for payment and expenditures approved, and contracts, agreements and obligations calling for or requiring the expenditure of money made and assumed, provided that the total sum of money required or called for by such expenditures, orders, contracts, agreements, and obligations shall not exceed the sum so certified. Provided, however, that for any expenditure, contract, agreement, obligation, or order calling for or requiring the expenditure or payment of money in any amount in excess of Five Hundred Dollars ($500.00), a separate certificate as provided in Section 5660 of the General Code, shall be required.

HISTORY: — Passed Jan. 15, 1926.

SEC. 5661. **[Liability of officer for violation of preceding section.]** Every contract, agreement or other obligation and every order entered into or issued contrary to the provisions of the preceding section shall be null and void, and no claim or demand thereon shall be recoverable from any county or other political subdivision or taxing district or from any public funds.

Any officer, employee or other person who issues any order contrary to the provisions of the preceding section or who expends or authorizes the expenditure of any public funds for or on account of any such void contract, agreement, obligation, or order, shall be liable to the county or other political subdivision or taxing district for the full amount paid from the funds of such county, subdivision or district on or on account of any such void contract, agreement, obligation or order.

Any auditor or clerk of any county or other political subdivision or taxing district who furnishes a certificate under section 7 of this act, which contains any false statement shall be liable to the county or other political subdivision or taxing district for the full amount paid by or recovered from such county, subdivision or district on or on account of any contract, appropriation or expenditure based upon such false certificate. The prosecuting attorney of the county or the city solicitor or other chief law officer of the subdivision or district shall enforce this liability by civil action brought in any court of appropriate jurisdiction in the name of and on behalf of the county, municipality, subdivision or district.

In case the prosecuting attorney, city solicitor or other chief law officer of the subdivision or district fail, upon the written request of any taxpayer of the subdivision or district, to institute action for the enforcement of such liability, such taxpayer may institute suit in his own name on behalf of the subdivision or district.

HISTORY: — R. S. § 2834b; 93 v. 218; 99 v. 520; R. & E. 111 v. 376.

CHAPTER XIV

Tax Rate Limitations

SEC. 5649-1. **[Tax levy for sinking fund and interest.]** In any taxing district, the taxing authority shall, within the limitations and in the manner prescribed by law, levy a tax sufficient to provide for interest and maturity payment purposes for all serial bonds issued by any political subdivision, and for interest and for sinking fund purposes of all bonds heretofore issued by such political subdivision, which tax shall be placed before and in preference to all other items, and for the full amount thereof.

HISTORY: — 101 v. 430; 109 v. 346.

SEC. 5649-1b. **[Resolution or ordinance shall contain tax levy and be included in annual budget.]** The resolution, ordinance or other measure under which bonds are isued or authorized shall, within the limitations prescribed by law, provide for a levy of taxes, in the manner prescribed by law, sufficient to pay the interest and principal of the bonds as they mature and every such resolution, ordinance or measure shall be certified by the fiscal officer of the political subdivision to the county auditor of the county in which the subdivision is located. Thereafter, the county auditor, without further action by the tax-levying authority of the subdivision, shall include said annual levies in the appropriate annual budgets submitted by him to the budget commissioners as provided in section 5649-3c of the General Code, including the county budgets; provided, however, that the county commissioners of any county, board of education of any school district, trustees of any township or council or chief legislative body of any municipality or other political subdivision may appropriate for the purpose of paying any part of the annual interest or principal of such bonds of the political subdivision maturing in any year any surplus in the sinking fund or other bond retirement fund of the political subdivision not required for the purpose for which the said sinking or other bond retirement fund was raised or assessments collected and applicable to the payment of such interest or principal or any such assessments due and payable during such year or proceeds of bonds and notes authorized by law to be applied to the payment of such interest or principal or collected inheritance taxes or surplus in the fund of any public utility or the estimated revenues of such utility in such year not required for operating expense or unexpended balances in funds created by issues of bonds and no longer needed for the purposes for

which such funds were created or premiums and accrued interest from sale of bonds authorized by law to be applied to the payment of such interest or principal or any other fund authorized by law to be applied to such payment, and certify such appropriation to the county auditor; but nothing herein contained shall be construed to authorize the surplus or revenues of any public utility to be used for or applied to the payment of the interest or principal of any bonds or indebtedness other than bonds issued or indebtedness incurred for such public utility. In the annual budgets submitted by the county auditor to the budget commissioners, the county auditor shall reduce the levy for said annual interest or principal by the amount of the sums or funds so appropriated, and such sums of funds shall be used for no other purpose than the payment of such interest or principal, until and unless said interest and principal be otherwise fully paid or liquidated; provided that no such appropriation shall be made from the sinking fund without the approval of the sinking fund trustees or commissioners. The sums thus included in any budget submitted to the budget commissioners shall not be reduced by said commissioners and shall be given by said auditor and commissioners and other taxing authorities all the precedence and priorities provided by law for interest and sinking fund and principal levies. The annual budget submitted to the county auditor, as required by law, by any county, school district, municipal corporation or other political subdivision shall, for the assistance of the county auditor, contain itemized and detailed statements of the amounts required for such annual interest and principal and of said sums or funds appropriated for their payment.

HISTORY: — 109 v. 344; 110 v. 462.

See opinions of Attorney General (1922), p. 626, cited under Sec. 2295-14.

SEC. 5649-1c. **[Certification by fiscal officers of tax necessary to pay judgments.]** On or before the first Monday in May of each year, the fiscal officer of the municipal corporation or other political subdivision shall certify to the council, county commissioners, board of education or other tax levying authority of his political subdivision the amount of tax necessary to provide for the payment of final judgments against the political subdivision, except in condemnation of property cases, and said tax levying authority shall place such amount in the annual tax levying ordinance, resolution or other measure for the full amount certified.

HISTORY: — 109 v. 345.

The fiscal officer of the subdivision in certifying the levy for the payment of final judgments provided for by section 5649-1c G. C., should anticipate so far as possible the amount needed for the payment of future judgments as well as that needed for the immediate payment of judgments already rendered.

Op. Atty. Gen. (1922), p. 593.

SEC. 5649-2 (No change since 1922 edition.)

The budget commissioners cannot be compelled to approve and certify, as part of the tax levy of a city, an amount sufficient to pay interest and sinking fund on bonds for the city's portion of the cost of a street improvement if the item sought to be approved, together with other local levies combined, exceeds the fifteen-mill limitations stipulated in Section 5649-5b, G. C.

Although the charter of the city authorizes such a levy "in addition to all other taxes authorized by law," such authority is controlled and limited by the foregoing section. (State, ex rel. Toledo v. Cooper, Auditor, 97 O. S., 86, followed and approved.)

The power of municipalities, both to incur debts and to levy taxes, may be restricted or limited by law. And a municipality, by adopting a charter, cannot escape from limitations imposed thereon by the general assembly.

Sections 5649-2 to 5649-5b, General Code impose limitations upon taxing districts in making levies for local purposes. Such taxing districts may not make an additional levy for the payment of interest and sinking fund on bonds issued for the purpose of fire equipment and apparatus, if such additional levy (though within the fifteen-mill limitation) is outside of the ten-mill limitation provided for in Section 5649-2, General Code, unless such additional levy is to provide for an indebtedness incurred by a vote of the people. Such vote must be one authorized by law and requires the approval of two-thirds of the voters voting upon the question of issuing bonds, as provided by Sections 3942 and 3947, General Code. A majority vote authorized by ordinance is not comprehended within the meaning of Section 5649-2, General Code.

State, ex rel., v. Bish, 104 O. S. 206.

SEC. 5649-3a. **[Tax levies; limitation.]** The aggregate of all taxes that may be levied by a county, for county purposes, on the taxable property in the county on the tax list, shall not exceed in any one year three mills. The aggregate of all taxes that may be levied by a municipal corporation on the taxable property in the corporation, for corporation purposes, on the tax list, shall not exceed in any one year five mills.

The aggregate of all taxes that may be levied by a township, for township purposes, on the taxable property in the township on the tax list, shall not exceed in any one year one and five-tenths mills. The local tax levy for school purposes shall not exceed in any one year three mills on the dollar of valuation of taxable property in any school district. Such limits for county, township, municipal and school levies shall be exclusive of any special levy provided for by a vote of the electors, any levy excepted from the limitation provided for in section 5649-2 of the General Code or authorized by said section or by any other provision of law to be made in addition to the limitation provided for in said section; nor shall such limits include special accessments, levies for road taxes that may be worked out by taxpayers, and levies and assessments in special districts created for roads or ditch improvements, over which the budget commissioners shall have no control.

HISTORY: — 102 v. 266; 108 v. Pt. II, 1304; 109 v. 146; 111 v. 378.

SEC. 5649-3d. **[When budget shall be adopted; what it shall include; county auditor's duties.]** On or before the fifteenth day of July in each year, the county commissioners of each county, the board of education of each school district, the council or other legislative authority of each municipality, including charter municipalities, the trustees of each township, and any other public body authorized by law to levy taxes, shall adopt a budget for the next succeeding fiscal year; provided, however, that this requirement shall not be construed to modify the provisions of law or charter relating to the procedure of preparations of the annual budget or to transfer to council or other legislative authority the preparatory steps which by law or charter are entrusted to the mayor or other executive or administrative official or board. Such budget shall include detailed estimates of all balances that will be available at the beginning of the said fiscal year for the purposes of such year, and of all revenues to be received for such fiscal year, including all general and special taxes, fees, costs, percentages, penalties, allowances, perquisites and all other types or classes of revenue; also estimates of all expenditures or charges in or for the purposes of such fiscal year to be paid or met from the said revenues and balances. Such budget shall be so segregated as to give effect to the requirements of law relating to the respective purposes to which said revenues and balances are applicable, to the end that no expenditures shall be authorized or made for any purpose in excess of the money lawfully available therefor. Such budget shall also include or be accompanied by such further information or statements, and shall be in such form and be so itemized and classified as shall be prescribed by the bureau of inspection and supervision of public offices. Any information requested by the county budget commission shall also be included. Before final adoption, every such budget, in the tentative form in which it is introduced into the budget-making board or body, shall be made conveniently available to public inspection for at least ten (10) days by having at least two copies thereof on file in the office of the chief clerk or similar official of such board or body; and such board or body shall hold at least one public hearing thereon, of which public notice shall be given by at least one publication, not less than ten (10) days previous to the date of hearing, in the official publication of such board or body or a newspaper having general circulation in the county, school district, municipality, township or other subdivision or district, as the case may be. The budget, after adoption, shall be submitted to the appropriate county auditor on or before the twentieth day of July or at such later time as may be prescribed by the tax commission of Ohio. The county auditor shall provide and furnish the necessary blank forms and instructions for making up the budgets; and it shall be his duty, when requested by the county commissioners, to prepare the tentative

county budget for the fiscal year next succeeding the date of such request.

HISTORY: — 102 v. 266; R. & E. 111 v. 371.

SEC. 5649-3e. **["Reserve balance."]** A board of education may include in its budget estimate of expenditures an item to be known as a "reserve balance" which shall not be greater than ten per cent of the total estimated expenditures included in such budget. The full amount of the reserve balance, as allowed by the county budget commission, shall be retained by the county auditor and treasurer out of the second semi-annual settlement of taxes until the beginning of the next succeeding fiscal year, and thereupon with the depository interest apportioned thereto shall be forthwith turned over to the board of education to be used for the purposes of such fiscal year.

In estimating the balance that will be available on January 1, 1926, a board of education may deduct therefrom an amount not greater than 15 per cent of the total salaries of educational employees for the twelve months ending June 30, 1925.

HISTORY: — 102 v. 266; R. & E. 111 v. 372.

SEC. 5649-3f. **[Determination of free and unencumbered balances; certification.]** In addition to its other duties, the county budget commission of each county shall, from the information furnished by the budgets and accompanying data and from other sources of information available to it, determine with respect to its county and to each political subdivision and taxing district within the county the probable amounts of the free and unencumbered balances at the beginning of the succeeding fiscal year, and of the revenues from each and every source which will be respectively available for the use of the county and of each such political or taxing subdivision or district for and during such fiscal year, after making the adjustments amongst the county and the subdivisions and districts authorized by the laws relating to tax limitations. Not later than the fifteenth day of October, the budget commission shall certify said determinations respectively to the appropriate taxing and appropriating authorities of the county and said subdivisions and districts, each of which certifications shall be the official estimate of balances and revenues for such fiscal year and govern the aggregates of appropriations in and for such fiscal year. In the event that the electors of any such county, subdivision or district shall, as provided by law, provide for additional tax levies, not included in the budget or certification, to be available during and for such fiscal year, then forthwith upon the certification of such fact to the budget commission by the county or such subdivision or district, the budget commission shall certify an amended estimate based upon such additional levy. In the event that the county or any subdivision or district collects revenues, available for the purposes of

such fiscal year, from a new source or sources of revenue which had not been included in the budget or certification, or in the event that, by reason of under-estimate of balances, increased tax valuations or any other cause, the actual balances and receipts available for the purposes of such fiscal year exceed the amount which had been certified by the budget commission, then forthwith upon the certification by the fiscal officer of the county, district or subdivision of the fact and amount of said additional or excess balances and receipts, the budget commission shall certify an amended estimate including such additional or excess balances, revenues or receipts.

On or about the first day of each fiscal year, each such fiscal officer shall certify the amount of the actual free and unencumbered balances to the county budget commission; and if such amount in the case of any county, district, or sub-division be less than the amount which had been included in the aforesaid official estimate, the budget commission may certify an amended estimate based upon such actual balances. Any such amended estimate shall thereupon be deemed the appropriate official estimate of revenues and balances. Any political subdivision or taxing district which is dissatisfied with any such official estimate of revenues and balances may, through its auditor or other chief fiscal officer, appeal to the tax commission of Ohio, which commission shall thereupon have power to modify the estimate, and such modified estimate shall be deemed the appropriate official estimate of revenues and balances.

HISTORY: — 111 v. 373.

SEC. 5649-3g. **[Appropriations; interest, principal and sinking fund charges.]** At the beginning of each fiscal year, the county commissioners of every county, the board of education of every school district, including county school districts, the council of or other legislative authority of every municipal corporation, including charter municipalities, the trustees of every township, and the governing board or body of every other type of political subdivision or taxing district authorized by law to levy taxes or expend public funds, shall make appropriations classified for the several purposes for which expenditures are to be made for and during the said fiscal year, from the funds of such county, school district, municipal corporation, township, or other political subdivision or taxing district. The appropriation measure or measures of any county or political subdivision or taxing district shall include provision for the full amount of interest, principal and sinking fund charges maturing on obligations of such county, subdivision or district during such year, excepting interest, principal or sinking fund charges the payment of which shall have been lawfully authorized and directed from the proceeds of bond issues, and may include an emergency or contingent item to provide for unanticipated emergencies or contingencies. The aggregate of all appropriations of or from the funds of any county, political

subdivision or taxing district for any fiscal year shall not exceed the amount of the official estimate of revenues and balances of such county, subdivision or district as made by the budget commission, or, in case of appeal, by the tax commisison of Ohio. No appropriation shall become effective until there be filed with the appropriating authority by the county auditor a certificate that the appropriation, taken together with all other outstanding appropriations, does not exceed said official estimate and in every case in which the appropriation does not exceed said estimate, the county auditor shall give such certificate forthwith upon receiving from the appropriating authority a certified copy of the appropriation measure.

HISTORY: — 111 v. 374.

The amount expended by a county office for salaries of deputies, assistants and other employes is fixed by the appropriation measure passed by a resolution of the county commissioners at the beginning of the fiscal year and the amount of such expenditures is limited to the amount appropriated.

Op. Atty. Gen. No. 2934, November 11, 1925.

SEC. 5649-3h. **[Amending or supplementing appropriation ordinance.]** Any appropriation ordinance or other appropriation measure may be amended or supplemented from time to time, or a transfer may be made from one appropriation item to another, provided that such amendment or supplement shall comply with all provisions of law governing the appropriating authority, including compliance with section 5 of this act, and provided further that no appropriation for any purpose shall be reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation for such purpose. Any appropriation shall cease to have force or effect after the termination of the fiscal year in which it was made; provided, however, that funds unexpended at the said termination of the said fiscal year and which had been appropriated during such year for the payment or performance of contractual obligations unliquidated and outstanding at such termination shall not be required to be re-appropriated, but such unexpended funds shall not be included by any budget-making body or board or any county budget commission in estimating the balance or balances available for the purposes of the next or any succeeding fiscal year.

HISTORY: — 111 v. 375.

SEC. 5649-4. **[Tax levy for emergency irrespective of limitations.]** For the emergencies mentioned in sections 4450, 4451, 5629 and 7630-1 of the General Code; for local school purposes heretofore authorized by a vote of the electors under the provisions of sections 5649-5 and 5649-5a of the General Code, to the extent of three mills, for such school purposes; for the purposes and to the extent heretofore au-

thorized by a vote of the people under the provisions of sections 5649-6a and 5649-6b of the General Code, and for the purposes and to the extent approved by vote of the people under the provisions of sections 1, 2 and 3 of this act, the taxing authorities of any district may levy a tax sufficient to provide therefor, irrespective of any of the limitations of this chapter.

HISTORY: — 101 v. 430; 103 v. 527; 108 v. Pt. II, 1306; 111 v. 348.

SEC. 5649-5. **[Proceedings when maximum rate insufficient.]** The commissioners of any county, any board of education, other than a county board of education, the legislative body of any municipality, and the trustees of any township may, at any time prior to September 15th in any year, by a vote of two-thirds of all the members of said body, declare by resolution that the amount of taxes which may be raised at the maximum rate authorized by sections 5649-2, 5649-3a, or 5649-3c or at the combined maximum rate authorized by section 5649-5b of the General Code will be insufficient to provide an adequate amount for the necessary requirements of the taxing district in question, and that it is necessary to levy taxes in excess of said limitations either (1) for the purpose of meeting the current expenses of the subdivision, (2) for the payment of the interest, principal and sinking fund charges on certain described bonds or notes of the subdivision issued subsequent to January 1, 1925, (3) for the payment of the interest, principal and sinking fund charges on bonds or notes issued and authorized to be issued prior to January 1, 1925, or (4) for the support of a municipal university in an amount not exceeding the levy authorized by section 7908 of the General Code, or (5) for any purpose for which the bonds of said subdivision may be issued. Such resolution shall be confined to a single purpose and shall specify the amount of the increase in rate which it is necessary to levy, the purpose thereof, and the number of years during which such increased rate may be levied, which may or may not include the current year. The number of years shall be any number not exceeding five, except that when the additional rate is for the payment of interest, principal and sinking fund charges on bonds or notes the increased rate shall be for the life of the bonds.

HISTORY: — 101 v. 430; 102 v. 266; R. & E. 111 v. 345.

SEC. 5649-5a. **[Submission of question; election.]** When a copy of said resolution is certified to the board of deputy state supervisors and inspectors of elections for the proper county or counties prior to September 15th in any year, the proposal therein contained shall be submitted to the electors of the taxing district at the succeeding November election. The board of deputy state supervisors and inspectors of elections shall make the necessary arrangements for the submission of such question to the electors of such taxing district, and the election shall be conducted,

canvassed and certified in like manner as regular elections in such taxing district for the election of officers thereof, except as otherwise expressly provided by law. Notice of the election shall be published in one or more newspapers printed and of general circulation in the taxing district, once a week for four consecutive weeks prior thereto, setting out the resolution and the time and place of holding the election. If no newspaper of general circulation in the district is printed therein, the notice shall be posted in two conspicuous places therein at least thirty days prior to the election, and published once a week for four consecutive weeks in one or more newspapers of general circulation in the district.

The form of the ballots cast at such election shall be:

"To permit a levy of taxes for the benefit of (name of district) .....for the purpose of..... (purpose stated in.....Resolution) ..... not exceeding.....mills for.....'life of bonds' .....'years.' No."

To permit a levy of taxes for the benefit of (name of district) .....for the purpose of..... (purpose stated in.....Resolution)..... not exceeding.....mills for.....'life of bonds' .....'years.' Yes."

The question covered by such resolution shall be submitted as a separate proposition, but may be printed on the same ballot with any other proposition submitted at the same election other than the election of officers. More than one such question may be submitted at the same election.

HISTORY: — 102 v. 266; R. & E. 111 v. 346.

SEC. 5649-5c. **[Result, when majority of the electors vote in favor of question.]** If the majority of the electors voting thereon at such election vote in favor thereof, the taxing authorities of said district may levy taxes within said district at the additional rate for the years and for the purposes stated in said resolution, or at any less rate, or for any of said years or purposes, irrespective of the limitations imposed by sections 5649-1 to 5649-6 inclusive, of the General Code, provided that levies for payment of interest, retirement and sinking fund charges shall not exceed the amount necessary for such charges on the bonds mentioned in the resolution, and shall continue in effect for the life of the bonds. Such additional levy, if applicable to the current year, shall be made within one week after the canvass of the vote upon such proposition is completed, and in all other years prior to the first Monday in August. The county auditor to whom such levies are certified shall forthwith extend them on the tax list of such district for collection.

HISTORY: — 111 v. 347.

SEC. 5649-5d. **[Inclusion in budget or levy, a tax for any specified public improvement.]** The commissioners of any county, any board of education other than a county board of education the legislative body of any municipality and the trustees of any township may include in their budget or levy a tax for any specified public improvement or improvements for which bonds may be lawfully issued, which tax shall be subject to the same limitations as levies for current expenses of the subdivision unless exempted therefrom by vote of the people under the provisions of this act. The proceeds of such levy shall be deposited in a special fund in the hands of the sinking fund trustees of said subdivision or if there are no such trustees, in the hands of the county treasurer of the county in which the subdivision is located. The trustees of the sinking fund shall invest all moneys received by them under the provisions of this section in the manner provided in section 4514 of the General Code, and shall hold in reserve only such sums as may be necessary to carry out the purpose of the special levy. The county treasurer shall keep in his hands all moneys received by him under the provisions of this section in the same manner as prescribed by law for all other taxes. The bonds executed by said trustees and treasurer for the payment of all moneys which come into their hands, shall cover all sums under such levy. The interest received thereon, all subsequent tax levies for the same purpose, and all donations received for that purpose shall be added to the fund. All payments from such fund shall be upon the warrant of the auditor or other fiscal officer of the subdivision for whose benefit the tax is levied, and all expenditures shall be in accordance with the law, so far as it is applicable, governing the expenditure of public funds of said subdivision.

HISTORY: — 111 v. 347.

SEC. 5649-5e. **[Limitation of use of funds; penalty.]** Said fund shall be used only for the specified purpose for which the tax is levied, and may be used in connection with the proceeds of any bond issue made for the same purpose. Whoever uses or authorizes to be used such fund or any part thereof for any purpose except that for which the levies paid therein were made shall be fined not more than one thousand dollars or imprisoned not more than six months, or both.

Provided that if any unexpended balance in said fund is no longer needed for the purpose for which said tax is levied, it shall be transferred to the sinking fund to be applied to the payment of bonds. No such transfer shall be made until the object of the levy is satisfied or abandoned.

HISTORY: — 111 v. 348.

SEC. 5649-5f. **[Tax levy for general purposes; limitation.]** The

taxing authorities of any municipality may by resolution adopted by a two-thirds vote, levy annually for the general purposes of the municipality in addition to the levy for current expenses within the ten mill limitation prescribed by the General Code on the tax rate, a tax not exceeding three and a half mills upon each dollar of the taxable property of such municipality. Such levy shall be subject only to the limitation imposed by the combined maximum tax rate for all taxes by section 5649-5b, and shall include any levies heretofore authorized by vote of the electors of the municipality under sections 5649-5, 5649-5a, and 5649-5b, and a sufficient levy under and within the provisions of section 7908 of the General Code, to produce the amount requested from the budget commission for any municipal university. The budget commission shall not reduce the total levies for current expenses within the combined maximum rate in any city in which a university levy under section 7908 is operative below four and one-half mills and in any city in which such university levy is not operative below four mills, unless a lesser rate will produce an amount sufficient to meet the items of current expense in the city budget. Provided that the tax levies for interest and sinking fund requirements of bonds and notes within the combined maximum tax rate imposed by section 5649-5b shall in no manner be impaired by the levies authorized under this section. The additional levy authorized as hereinbefore set forth shall be certified to the budget commission prior to the first Monday in August.

HISTORY: — 111 v. 348.

SEC. 5649-6a. (Repealed 111 v. 349.)

SEC. 5649-6b. (Repealed 111 v. 349.)

SEC. 5649-6c. (Repealed 111 v. 349.)

SEC. 5649-9. **[Certain definitions apply.]** That definitions contained in section 2295-6 of the General Code shall be applied to the terms used in this act.

HISTORY: — 111 v. 335.

SEC. 5649-9a. **[Issue of bonds; procedure.]** The bond-issuing authority of any political subdivision may elect to submit any bond issue authorized by law to vote of the people. In such case and in every case on which said bond issuing authority is required to submit any bond issue to vote of the people, they shall pass a resolution which shall set forth the necessity of such bond issue, its purpose, amount and approximate maturities, and of the levy of a tax outside of the limitations of section 5649-5b of the General Code, and all other limitations upon tax rates prescribed by law, to pay the interest on and to retire the said bonds. Said resolution shall also state approximately the dates and maturities of the bonds to be issued. They shall certify such resolution to the county

auditor at least sixty days prior to the November election at which it is desired to submit such question. Thereupon and more than fifty days prior to such November election the county auditor shall calculate the average annual levy throughout the life of the bonds which will be required to pay the interest on and retire such bonds, assuming that the amount of the tax list of such subdivision remains the same throughout the life of said bonds as the amount of the list for the current year, and if this is not determined, the estimated amount submitted by the auditor to the county budget commission. The auditor shall, not less than fifty days prior to such November election certify the amount of such average to the bond-issuing authority submitting the same. Thereupon the said authority, if it desires to proceed with the issue of said bonds, shall more than forty days prior to such November election, certify its resolution, together with the amount of the average tax levy estimated by the county auditor and the maximum number of years required to retire the bonds, to the deputy state supervisors of elections of the county, and they shall prepare the ballot and make other necessary arrangements for the submission of the question to the voters of the county at the ensuing November election.

HISTORY: — 111 v. 335.

SEC. 5649-9b. **[Holding of elections; when; notice.]** The election shall be held at the regular place for voting in such district at such November election, and shall be conducted, canvassed and certified in the same manner as regular elections in such taxing district for the election of officers thereof. Notice of the election shall be published in one or more newspapers printed and of general circulation in the subdivision once a week for four consecutive weeks prior thereto stating the amount of the proposed bond issue, the purpose for which it is to be issued, and the maximum number of years during which such bonds shall run, and the estimated average additional rate outside of the limitations of section 5649-5b as certified by the county auditor. If no newspaper of general circulation is printed in said subdivision, the notice shall be posted in two conspicuous places therein at least thirty days prior to the election and published once a week for four consecutive weeks in one or more newspapers of general circulation in the district.

HISTORY: — 111 v. 335.

SEC. 5649-9c. **[Form of ballot; proceeds of bonds.]** The form of the ballots at such election shall be as follows:

"For an issue of bonds by the.....for the purpose of.....in the sum of .....and a levy of taxes outside of existing limitations estimated by the county auditor to average.....

.....mills for a maximum period of..... years to pay the principal and interest on such bonds. YES."

"For an issue of bonds by the.....for the purpose of.....in the sum of .....and a levy of taxes outside of existing limitations estimated by the county auditor to average..... .....mills for a maximum period of..... years to pay the principal and interest on such bonds. NO."

If fifty-five per cent of those voting upon the proposition vote in favor thereof, the taxing authorities of such district shall have authority to proceed with the issue of such bonds, and the levy of a tax sufficient to pay the interest and retirement levies on such bonds outside of the limitations of section 5649-5b and all other limitations upon tax rates prescribed by law during the life of the bonds in the manner provided by law. The proceeds of the bonds shall be used exclusively for the purposes set forth in the resolution of the bond-issuing authority submitting such issue to vote of the people. Bonds may be issued in series, and the terms of such series may be different. Each series shall be issued under the authority of a separate resolution or ordinance and shall comply as to maturity and all other terms with the provisions of sections 2295-9 to 2295-12, inclusive, of the General Code.

HISTORY: — 111 v. 336.

SEC. 5649-9d. **[Submission of question of issuing bonds; when, to tax commission.]** The question of issuing bonds shall always be submitted to popular vote at a November election, except that whenever it is necessary to rebuild or repair public property wholly or partially destroyed by fire or other casualty, the question of issuing bonds to rebuild or repair said property or to build a new similar property in lieu of repairing or rebuilding said property may be submitted to popular vote at a special election called for that purpose with the consent of the tax commission of Ohio. In such case the bond-issuing authority of said subdivision shall submit said question to the tax commission of Ohio, and if said tax commission of Ohio finds that the submission of said question at a special election is necessary to meet the requirements of the people of said subdivision, it shall certify said fact together with its written consent to the bond-issuing authority desiring to have said special election called. Thereupon the requirements of sections 2, 3 and 4 of this act shall apply but all references in said sections to the November election shall be taken to refer to the date of said special election, instead of the November election therein referred to. The provisions of sections 2, 3, 4 and 5 of this act shall supersede the various provisions of law governing the issue of bonds of any bond-issuing authority, the passage of resolutions, the publication of notices, the holding of elections, the form of

the ballot, the percentage of vote required, the time of holding elections and the levy of taxes, in so far as they are inconsistent herewith.

HISTORY: — 111 v. 336.

SEC. 5649-9e. **[When board of education shall submit question to tax commission.]** Whenever any board of education desires to issue bonds which will make the net indebtedness created or incurred by the said school district as defined in section 7630-2 of the General Code and with the exceptions therein provided exceed four per cent of the total value of all property in such school district as listed and assessed for taxation, said board of education shall submit to the tax commission of Ohio the question whether the issue of said bonds shall be submitted to popular vote, and no popular vote shall be taken upon the question of issuing said bonds until the tax commission has given its written consent thereto in accordance with the provisions of this section. The tax commission shall consider whether the interest and retirement charges on any such bonds will be unreasonably burdensome on the people of said school district. If they find that they will not be so unreasonably burdensome, they shall certify said fact to the board of education submitting the question together with their written consent that said issue be submited to popular vote, and thereupon said board of education may submit said question to popular vote in accordance with the provisions of law applicable thereto.

HISTORY: — 111 v. 337.

SEC. 5649-9f. **[Refunding outstanding bonds; submission to tax commission; powers and duties of commission.** Whenever the bond-issuing authority of any political subdivision desires to refund any outstanding bonds of the subdivision in question which are about to mature other than serial bonds or bonds which are subject to call or redemption and which the political subdivision proposes to call or redeem prior to maturity, they shall submit to the tax commission of Ohio the question whether said bonds shall be refunded and in what manner. The tax commission of Ohio shall consider whether any other method of payment in whole or part exists, and whether it is necessary to refund the said bonds in whole or in part in order to effect their payment. If they find that no other method of payment in whole or part exists, and that the refunding of said bonds in whole or in part is necessary in order to effect the payment thereof, they shall certify said fact to the bond-issuing authority submitting the question to them, together with their written consent to the issue of all or such part of said refunding bonds as they so find to be necessary. They shall in said order determine the maturities of the bonds to be issued subject to the provisions of section 2295-12 of the General Code and no such bonds shall mature more than fifteen years after their date of issue. Thereupon the said bond-issuing authority shall

have power to borrow money in the amount certified by the tax commission to pay the maturing bonds, and to issue their refunding bonds with the maturities prescribed by the tax commission. The interest and retirement levies thereon shall have the same status with respect to tax limitations as the interest, sinking fund and retirement levies on the bonds, notes or other evidences of indebtedness which are to be refunded.

HISTORY: —111 v. 337.

CHAPTER XV

Gasoline Tax Act

SEC. 5526. **[Definition of terms.]** The following words, terms and phrases, as used in this act, are hereby defined as follows:

"Motor vehicles" shall include all vehicles, engines, machine or mechanical contrivances which are propelled by internal combustion of motor vehicle fuels, as herein defined. "Motor vehicle fuels" shall include gasoline and all other volatile and inflammable liquids derived from petroleum, which are produced, refined, prepared, distilled, compounded or used for the purpose of generating power by means of internal combustion motors, by whatever name such fuels may be known or sold. The term "motor vehicle fuels", however, shall not include the product commonly known as kerosene oil.

"Dealer" shall include any person, firm, association, partnership or corporation who imports or causes to be imported into the state of Ohio, any motor vehicle fuel or fuels as herein defined, for use, distribution or sale and delivery in Ohio, and after the same reaches the state of Ohio, also any person, firm, association, partnership or corporation who produces, refines, prepares, distills, manufactures or compounds such motor vehicle fuel as herein defined in the state of Ohio for use, distribution or sale and delivery in Ohio. Provided, however, that when any such person, firm, association, partnership or corporation so importing such motor vehicle fuel into this state, shall sell such motor vehicle fuel in tank car lots or in its original containers to any purchasers for use, distribution or sale and delivery in this state, then such purchasers and not the seller shall be deemed the dealer as to the motor vehicle fuels contained in such tank car lots or original containers.

HISTORY: — 111 v. 294.

1. House Bill No. 44 (111 O. L., p. 294) is a law providing for a tax levy and comes within the provisions of Section 1d of Article II of the Constitution of Ohio, "laws providing for tax levies * * * shall not be subject to the referendum."

2. House Bill No. 44 does not lay a tax upon property, in violation of the provisions of Section 2 of Article XII requiring property to be taxed by a uniform rule at its true value in money, but does lay a tax upon the use of such property for certain designated purposes.

3. House Bill No. 44 appropriates the funds to be collected thereunder to the following purposes and no other: To the state for a rotary fund to be used in refunding taxes as provided therein; to the state to be expended by the director of highways and public works for the purpose of maintaining, repairing and keeping in passable condition for travel the roads and highways of the state now or hereafter required by law to be maintained by the department of highways and public

works; to the counties of the state to be used for the sole purpose of maintaining and repairing the county system of public roads and highways within such counties, and to the municipalities of the state for the sole purpose of maintaining and repairing the public streets and roads within such corporations.

4. The phrase "current expenses," as used in Section 1d of Article II of the Constitution, in addition to including the expenses incident to the officering and maintaining of the state government, includes the expense of keeping in repair and maintaining the property of the state government, and, as applied to roads, includes the maintaining and repairing thereof as distinguished from new construction.

5. The general provisions of Section 14, of House Bill No. 44, and the incorporation therein of the provisions of Section 2 by reference, as not effective to modify the specific limitations contained in Section 12 upon the purposes for which the appropriations in that Section made can be used.

6. In construing an act, the court will give effect to the specific limitations therein contained over the general provisions thereof, where the specific and general provisions can not be reconciled, and will not permit ambiguous language to modify certain and definite provisions.

The State, ex rel. Janes, v. Brown, Secretary of State. 112 O. S. 590. Decided May 19, 1925.

SEC. 5527. **[Purpose of tax; exemptions.]** For the purpose of providing revenue for maintaining the main market roads and intercounty highways of this state in passable condition for travel, for repairing the damage caused to such highway system by motor vehicles used on the same, for widening existing surfaces on such highways where such widening is rendered necessary by the volume of motor vehicle traffic thereon, for resurfacing such highways where existing surfaces have become worn or rutted, for enabling the several counties and municipal corporations of the state to properly maintain and repair their roads and streets, and supplementing revenue already available for such purposes and arising from direct taxation and from registration fees of motor vehicles, and for distributing equitably upon those persons using the privilege of driving such motor vehicles upon such highways and streets a fair share of the cost of maintaining and repairing the same, there is hereby levied and imposed on the sale and use of each gallon of motor vehicle fuel sold or used by any dealer, as herein defined, within the state of Ohio, an excise tax of two cents; subject, however, to the following specific exemptions. The sale of motor vehicle fuel shall not be subject to said tax

(a) if such motor vehicle fuel be sold in tank car lots to be used wholly for purposes other than propelling motor vehicles on the public highway;

(b) if such motor vehicle fuel be exported or sold for exportation from the state of Ohio to any other state, or to any foreign country;

(c) if such motor vehicle fuel be sold by a dealer, as herein defined, to the United States government or any of its agencies;

(d) if such motor vehicle fuel be in process of transportation in

international or interstate commerce, except in so far as the same may be permitted under the provisions of the constitution of the United States and acts of Congress.

After the excise tax herein provided for on the sale or use of any motor vehicle fuel has been paid by the dealer as herein defined, such motor vhicle fuel may thereafter be used or sold or resold by any person, firm, association, partnership or corporation having lawful title to the same, without incurring any liability whatsoever for such tax.

HISTORY: — 111 v. 295.

SEC. 5528. **[Dealer's certificate and contents; filing of certificate.]** Within thirty days after this act takes effect, each dealer, as herein defined, doing business within the state of Ohio, shall file with the tax commission of Ohio, a certificate stating the name under which such dealer is transacting business within the state of Ohio, the location of its principal office or place of business within the state, the names and addresses of the partners, if such dealer is a partnership, or the names and addresses of the principal officers, if said dealer is a corporation or an association. If such dealer is a corporation organized under the laws of another state, territory or country such dealer shall furnish evidence to the tax commission that it has complied with the laws of Ohio relating to the transaction of business in Ohio. After thirty days from the date when this act goes into effect, no dealer shall sell, use or distribute any motor vehicle fuel until such certificate has been filed, and in the case of a foreign corporation, such evidence of authority has been furnished. The tax commission shall receive and file such certificates as comply with the terms of this act, and keep an alphabetical index thereof. Upon filing the certificate herein provided for, such dealer shall pay to the tax commission of Ohio as a filing fee the sum of five dollars. Anyone becoming a dealer within this state after this act takes effect shall forthwith file the certificate herein provided for, and if a foreign corporation, the evidence of authority to do business in this state.

HISTORY: — 111 v. 296.

SEC. 5529. **[Sworn monthly statement of vehicle fuel sold.]** Each dealer, as defined in this act, who shall engage within the state of Ohio in the sale or use of motor vehicle fuel, as herein defined, in his own name, in the name of others, or in the name of his representatives or agents, shall, not later than the fifteenth day of each calendar month, file with the tax commission of Ohio a statement under oath, of all such motor vehicle fuel sold or used by him or them in the state of Ohio during the preceding calendar month. Such statement shall include a separate statement of the amount of motor vehicle fuel upon which the excise tax is not required to be paid by this act. Such statement shall be sworn to by such dealer, if an individual; or by the general or managing agent or chief accountant, if a corporation.

The time intervening between the date when this act takes effect and the first day of the following calendar month or the time intervening between the time when anyone shall become a dealer within this state and the first day of the following calendar month, shall, for the purpose of this section, be regarded as a calendar month and the statement relating to such period shall be filed as herein provided.

History: — 111 v. 296.

SEC. 5530. **[Monthly statement by tax commission to state auditor; duties of auditor.]** On the twentieth day of each calendar month the tax commission shall transmit to the auditor of state a statement showing:

(a) The names of all dealers who have filed the statement provided for in section 4 of this act during the same calendar month.

(b) The number of gallons of motor vehicle fuel the sale or use of which is subject to the tax herein levied as shown by the reports of such dealers or as determined by investigation of the tax commission.

(c) The names of any dealers whom the tax commission finds to have improperly reported the quantity of fuel so used or sold during any preceding calendar month, together with the number of gallons of such fuel found by the commission to have been omitted, if any.

(d) Such other information as the commission may deem necessary.

Upon receipt of such statement from the tax commission the auditor of state shall compute the tax due from each such dealer at the rate of two cents per gallon. A penalty of 15 per cent shall be added to the tax so computed on the basis of items found by the commission to have been omitted from the reports of any dealer. Between the twenty-fifth and the last day of said calendar month the auditor of state shall transmit to the treasurer of state a copy of such statement showing the amounts due from such dealers.

The auditor of state shall send to each dealer against whom findings have been made by the tax commission as herein provided a notice of the amounts due on such findings.

HISTORY: — 111 v. 297.

SEC. 5531. **[Payment by dealer to state treasurer.]** On or before the last day of each calendar month each dealer shall pay to the treasurer of state the excise tax due on the sale or use of motor vehicle fuel sold or used by him in the preceding calendar month, together with any tax penalty on omitted amounts as certified to him during such calendar month. Such payments shall be accompanied by a copy of the statement filed with the tax commisson of Ohio.

HISTORY: — 111 v. 297.

SEC. 5532. **[Statement by dealer to purchasers.]** Each seller shall render to all purchasers of motor vehicle fuel, except in cases of retail sales where exemption is not claimed by the purchasers under the terms of this act, and except in the case of sales of motor vehicle

fuel upon which the excise tax is not levied by this act, a bill showing the quantity and price of the motor vehicle fuel so sold. Such bill shall have printed or written thereon, in a conspicuous place, a statement that the liability to the state for the excise tax herein imposed has been assumed by the dealer, and that he or they have paid or will pay such excise tax on or before the last day of the following calendar month.

HISTORY:—111 v. 297.

SEC. 5533. **[Penalty for sale, etc.]** Any person, firm, association, partnership or corporation within this state who shall receive or accept any shipment in intra-state commerce of motor vehicle fuel from any dealer as defined in this act, or pay for the same or sell or offer the same for sale, unless the statement provided for by section 7 of this act shall appear upon the invoice covering such shipment or delivery; or any person, firm, association, partnership or corporation who shall receive, accept, pay for, sell or offer for sale, any quantity of motor vehicle fuel in violation of the terms of this act, shall be liable for the tax payable upon such quantity and in addition thereto a penalty of 15 per cent. History:—111 v. 297.

HISTORY:—111 v. 298.

SEC. 5534. **[Refunder of tax; sworn statement.]** Any person, firm, association, partnership or corporation who shall use any motor vehicle fuel, as defined in this act, on which the tax herein imposed has been paid, for the purpose of operating or propelling stationary gas engines, tractors not used on highways, motor boats or aircraft, or who shall use any such fuel upon which the tax herein provided for has been paid, for cleaning or dying, or any other purpose than the propulsion of motor vehicles operated or intended to be operated in whole or in part upon the highways of this state, shall be reimbursed to the extent of the amount of the tax so paid on such motor vehicle fuel in the following manner: provided however that such applications for refunds must be filed with the secretary of state within ninety days from the date of purchase or invoice.

Such person, firm, association, partnership or corporation shall file with the tax commission of Ohio a statement of the quantity of fuel used for purposes other than propulsion of motor vehicles, as set out in this section. Such statement shall be accompanied by the original invoice showing such purchase. On filing of such statement and invoice in form herein prescribed, the tax commission of Ohio shall determine the amount of refund due and within thirty days from the time of filing the same shall certify such amount to the auditor of state. The auditor of state shall thereupon draw a warrant on the treasurer of state in favor of the person claiming such refund. Such refund shall be paid by the treasurer of the state from the rotary fund hereinafter provided for.

The tax commission shall require the statement provided for herein to be supported by the affidavit of the claimant.

HISTORY:—111 v. 298.

SEC. 5535. **[Tax commission to prescribe forms; hearings by commission.]** The records of every dealer showing his purchases, receipts, sales, distribution and use of motor vehicle fuels shall at all times during the usual business hours of the day be open for inspection of the tax commission of Ohio or any deputy or employe authorized by it for such purpose. The tax commission shall have authority to prescribe all forms upon which reports shall be made to the commission, claims for refund presented to the commission, or forms of record to be used by dealers, as herein defined. In the enforcement of the provisions of this act the tax commission shall have power to hold such hearings and conduct such investigations as it may deem necessary and correct any errors found therein.

HISTORY:—111 v. 298.

SEC. 5536. **[Failure to file statement; making false statement, etc.; penalty.]** Any dealer, whether person, firm, association, partnership or corporation, who shall knowingly make any false statement in a report to the tax commission of Ohio or in connection with an application for refund of any tax as provided in this act, or who shall knowingly collect either directly or indirectly or cause to be repaid to him or to any other person any refund of such tax, without being entitled to the same, or who shall engage in business as a dealer as defined in this act, without having filed with the tax commission of Ohio the certificate provided for by section 3 hereof, or, if a foreign corporation the evidence of authority to do business in this state, shall upon conviction thereof be fined not less than twenty-five dollars nor more than one thousand dollars. Upon conviction of a second offense under the provisions of this section the offender shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not more than six months, or both.

HISTORY:—111 v. 299.

SEC. 5537. **[Rotary fund. Distribution; 30% to municipalities; 25% to counties; 45% to state.]** Upon receipts of taxes herein provided for the treasurer of state shall place the first $50,000.00 collected in a special fund to be known as the gasoline tax rotary fund. Thereafter as required by the depletion thereof he shall place to the credit of said rotary fund an amount sufficient to make the total of said fund at the time of each such credit amount to $50,000.00. The balance of taxes collected under the provisions of this act, after the credits to said rotary fund, shall be credited to a fund to be known as the gasoline tax excise fund.

Thirty per cent of such gasoline tax excise fund shall be paid on vouchers and warrants drawn by the auditor of state to the municipal

corporations within the state in proportion to the total number of motor vehicles registered within the municipalities of Ohio during the preceding calender year from each such municipal corporation as shown by the official records of the secretary of state, and shall be used by such municipal corporations for the sole purpose of maintaining and repairing the public streets and roads within such corporation.

Wherever a municipal corporation is on the line of an inter-county highway or main market road, one-sixth of the amount so paid to any municipal corporation shall be used by such municipal corporation for the sole purpose of maintaining and repairing such streets and roads within such municipal corporation, as may be designated by the director of highways and public works as extensions or continuances of inter-county highways or main market roads.

Twenty-five per cent of such gasoline tax excise fund shall be paid on vouchers and warrants drawn by the auditor of state in equal proportions to the county treasurer of each county within the state, and shall be used for the sole purpose of maintainnig and repairing the county system of public roads and highways within such counties. Forty-five per cent of such gasoline tax excise fund shall be apportioned to and expended by the department of highways and public works of the state of Ohio for the purpose of maintaining, repairing, and keeping in passable condition for travel the roads and highways of the state now or hereafter required by law to be maintained by the department of highways and public works of this state.

Out of the percentage so apportioned to the department of highways and public works not less than one million dollars in the fiscal year 1925-1926, and not less than one million five hundred thousand dollars in the fiscal year 1926-1927 shall be expended for the purposes of section 13 of this act.

HISTORY:—111 v. 299.

SEC. 5538. **[Duties of director of highways; main market roads and inter-county highways.]** As soon as this act shall take effect and funds become available, and as soon as it is practicable to organize proper working forces, the director of highways and public works shall take over for maintenance purposes as hereinafter defined, such mileage of the present system of main market roads and inter-county highways outside of incorporated municipalities as have not been constructed by the state or taken over by the state for maintenance, provided that all such portions of the inter-county highway system not at present under state maintenance, be first improved by the county to an extent which in the opinion of the director of highways and public works will permit of economical maintenance for the purpose of making them passable for traffic.

From the time such roads and highways are taken over, the director of highways and public works shall maintain said roads and highways, and the respective counties and townships of the state in which such roads and highways are located shall thenceforth be relieved of the duty of the maintenance thereof, but for the purpose of this section, maintenance shall not be construed to include the construction of any new bridges or culverts or the replacement of any bridges or culverts destroyed by the elements or by natural wear and tear, nor any construction work changing the type of construction existing on said roads at the time the same are taken over in accordance with the provisions of this section.

Nothing in this act shall be construed to prevent the authorities of any county or township from co-operating with the state in the construction, maintenance or repair of any section of main market road or inter-county highway within such county or township.

HISTORY: — 111 v. 300.

The proceeds derived from the gasoline tax may not be used by the county for the purchase of road machinery and equipment.

Op. Atty. Gen. No. 3092, Jan 25, 1926.

SEC. 5539. **[Rotary fund to be used for refunds; appropriation to counties and municipalities.]** There is hereby appropriated out of the gasoline tax rotary fund all sums that shall be placed to the credit thereof from the time this act takes effect until the 30th day of June, 1927. The sums so appropriated shall be used only for the purpose of paying the refunds provided for by section 9 of this act.

There is hereby appropriated for the use of the several municipal corporations and counties of the state and the department of highways and public works of Ohio from the gasoline tax excise fund all sums which shall be paid into said fund from the date this act takes effect until the 30th day of June, 1927. The sums so appropriated shall be used by such municipal corporations and counties and by the department of highways and public works for the purposes set out in sections 2 and 12 of this act and no other purpose whatsoever.

HISTORY: — 111 v. 301.

SEC. 5540. The general assembly of Ohio shall from time to time appropriate from the gasoline tax rotary fund and from the gasoline tax excise fund the moneys therein contained, to be used for the purposes set out in this act.

HISTORY: — 111 v. 301.

Sec. 6292 and Section 6295 as amended were also a part of the original Gasoline Tax Law.

CHAPTER XVI

Motor Transportation Companies

SEC. 614-2. **[Definitions.]** The following words and phrases used in this chapter unless the same is inconsistent with the text, shall be construed as follows:

The term "commission" when used in this act, or in chapter one, division two, title three, part first of the General Code and the acts amendatory or supplementary thereto means "the public utilities commission of Ohio".

The term "commissioner" means one of the members of such commission.

Any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated:

When engaged in the business of transmitting to, from, through or in this state, telegraphic messages, is a telegraph company;

When engaged in the business of transmitting to, from, through or in this state, telephonic messages, is a telephone company and as such is declared to be a common carrier;

When engaged in the business of carrying and transporting persons or property, or both as a common carrier, for hire, in motor propelled vehicles of any kind whatsoever, under private contract or for the public in general, over any public street, road or highway in this state, except as otherwise provided in section 614-84 is a motor transportation company;

When engaged in the business of carrying and transporting persons or property, or both, in motor propelled vehicles of any kind whatsoever, for hire, under private contract but not as a common carrier over any public street, road or highway, in this state is a private contract carrier;

The term "motor propelled vehicle" when used in this chapter means any automobile, automobile truck, motor bus, or any other self-propelled vehicle not operated or driven upon fixed rails or track;

When engaged in the business of supplying electricity for light, heat or power purposes to consumers within this state, is an electric light company;

When engaged in the business of supplying artificial gas for lighting, power or heating purposes to consumers within this state, is a gas company;

When engaged in the business of supplying natural gas for lighting,

heating or power purposes to consumers within this state, is a natural gas company;

When engaged in the business of transporting natural gas or oil through pipes or tubing, either wholly or partly within this state, is a pipe line company;

When engaged in the business of supplying water through pipes or tubing, or in a similar manner to consumers within this state, is a water works company;

When engaged in the business of supplying water, steam or air through pipes or tubing to consumers within this state for heating or cooling purposes, is a heating or cooling company;

When engaged in the business of supplying messengers for any purpose, is a messenger company;

When engaged in the business of signaling or calling by an electrical apparatus, or in a similar manner, for any purpose, is a signaling company;

When engaged in the business of operating, as a common carrier a railroad, wholly or partly within this state with one or more tracks upon, along, above or below any public road, street, alley way or ground, within any municipal corporation, operated by any motive power other than steam, and not a part of an interurban railroad, whether such railroad be termed street, inclined plane, elevated or underground railroad, is a street railroad company;

When engaged in the business of operating as a common carrier whether wholly or partially within this state, a part of a street railway constructed or extended beyond the limits of a municipal corporation, and not a part of an interurban railroad is a suburban railroad company;

When engaged in the business of operating a railroad, wholly or partially within this state, with one or more tracks from one municipal corporation or point in this state to another municipal corporation or point in this state, whether constructed upon the public highways or upon private rights-of-way, outside of municipalities, using electricity or other motive power than animal or steam power for the transportation of passengers, packages, express matter, United States mail, baggage and freight, is an interurban railroad company, and included in the term "railroad", as used in section 501 of the General Code. The term "railroad", when used in this act, includes all railroads, interurban railroad companies, express companies, freight line companies, sleeping car companies, equipment companies, car companies, water transportation companies, and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state.

HISTORY: — 102 v. 549; 110 v. 212; 111 v. 513.

1. The owner of a motor-propelled vehicle engaged in the business of carrying and transporting property in such vehicle for hire over the highways of this state pursuant to a definite contract describing the property to be carried and the points to and from which the same shall be carried and the compensation to be paid, such owner not holding himself out to the public as willing to carry property for other persons, and not in fact carrying property for any other persons than those with whom he has thus contracted, and not operating under any public franchise, is not a common carrier, and is not a motor transportation company as that term is defined in sections 614-2 and 614-84, General Code (110 O. L. 212, 213).

2. Persons, corporations, and firms who operate as such private carriers in carrying and transporting property over the highways of this state for hire are not subject to the provisions of the law regulating the operation of motor propelled vehicles, as enacted in 110 Ohio Laws, 212 to 223, inclusive, General Code.

3. A motor transportation company holding a certificate of convenience and necessity under the provisions of the act regulating motor transportation is not entitled to protection from competition as against owners of such privately operated motor vehicles over the same routes covered by such certificate.

Hissem v. Guran et al. 112 O. S. 59. Decided March 3, 1925.

SEC. 614-2a. **[Defining "public utility."]** The term "public utility" as used in this act, shall mean and include every corporation, company, co-partnership, person or association, their lessees, trustees or receivers, defined in the next preceding section, except private contract carriers and except such public utilities as operate their utilities not for profit, and except such public utilities as are, or may hereafter be owned or operated by any municipality, and except such utilities as are defined as "railroads" in sections 501 and 502 of the General Code, and these terms shall apply in defining "public utilities" and "railroads" wherever used in chapter one, division two, title three, part first of the General Code, and the acts amendatory or supplementary thereto or in this act.

HISTORY: — 102 v. 549; 111 v. 514.

SEC.614-84. **[Defining "motor transportation."]** (a) The term "motor transportation company," when used in this chapter, means every corporation, company, association, joint stock association, person, firm or co-partnership, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any motor propelled vehicle not usually operated on or over rails, used in the business of transportation of persons or property, or both, as a common carrier, for hire, under private contract, or for the public in general, over any public highway in this state; provided, however, that the term "motor transportation company" as used in this chapter shall not include any private contract carrier, as defined in section 614-2, and shall not include any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated, in so far as they own, control, operate or manage a motor vehicle or motor vehicles used for the transportation of persons or prop-

erty, or both, and which are operated exclusively within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous thereto, or in so far as they own, control, operate or manage taxicabs, hotel busses, school busses or sight-seeing busses, or in so far as they own, control, operate or manage motor propelled vehicles, the use of which is for the private business of the owners and the use of which for hire is casual and disassociated from such private business.

(b) The term "public highway," when used in this chapter means any public street, road or highway in this state, whether within or without the corporate limits of a municipality.

(c) The words "fixed termini" when used in this chapter, shall be understood to refer to the points between which any motor transportation company usually, or ordinarily operates or manages any motor propelled vehicle, and the words "regular route" shall be understood to refer to that portion of the public highway over which any motor transportation company usually, or ordinarily operates or manages any motor propelled vehicle. The words "irregular route," shall be understood to refer to that portion of the public highway over which is conducted any other operation of any motor propelled vehicle by a motor transportation company. Whether or not any motor propelled vehicle is operated by such motor transportation company, between fixed termini or over a regular route or irregular route within the meaning of this chapter; or whether or not the operator or carrier is engaged as a motor transportation company or a private contract carrier, shall be questions of fact and the finding of the commission thereon shall be a final order which may be reviewed as provided in section 614-89 of the General Code. And the commission is given jurisdiction to receive, hear and determine any complaint that may be filed in good faith against any private contract carrier that it has ceased to be such and has become a common carrier. Upon such complaint being filed the commission shall set the date for hearing which shall be not less than fifteen days after the filing of the complaint. Upon the date set the commission shall conduct a hearing and if it shall find that the private contract carrier complained against has ceased to be such, such carrier shall become subject to the provisions of this chapter applicable to a motor transportation company, and the commission may proceed in like manner upon its own initiative.

HISTORY: — 110 v. 213; 111 v. 19; 111 v. 515.

By the act of March 29, 1923, defining motor transportation companies, conferring jurisdiction upon the Public Utilities Commission over the transportation of persons or property for hire in motor vehicles, and providing for the supervision and regulation of such transportation (110 O. L., 211-223), it is made unlawful for any motor transportation company, as defined in that act, to transport or carry persons or property, or both, between fixed termini, or over a regular or irregular route, over any public street, road, or highway in this state, after the date

of the act going into effect, without first having secured from the Public Utilities Commission of Ohio a certificate declaring that public convenience and necessity require such operation.

By the act, all persons not actually operating in good faith upon the date of the filing of that act in the office of the Secretary of State, who thereafter begin or desire to begin such operation, are required to file an application for such certificate with the Public Utilities Commission of Ohio, as provided in Scetion 614-90, General Code, who shall determine whether the public convenience and necessity require the operation of a motor transportation company over the route designated in the application, and, in accordance with such determination, shall grant such certificate of public convenience and necessity upon the compliance of the applicant with the other provisions of the act and the rules and regulations of the commission, or refuse to grant same.

In determining whether public convenience and necessity require such motor transportation service, the Commission shall consider whether the public proposed to be served by such motor transportation company have or have not adequate common carrier transportation service independent of the service proposed to be rendered by the applicant, and whether the additional service proposed to be rendered by the applicant will result in the public receiving more adequate or less adequate service.

McLain v. Pub. Util. Comm. 110 O. S. 1.

NOTE. This section was amended in 111, v. 515.

See 112 O. S. 59 as cited under Sec. 614-2.

SEC. 614-85. **[Operation of motor vehicle for transportation purposes subject to provisions of this chapter.]** No motor transportation company, its lessees, trustees, receivers or trustees appointed by any court whatsoever, shall operate any motor propelled vehicle for the transportation of persons or property, or both, for hire, on any public highway in this state except in accordance with the provisions of this chapter.

HISTORY: — 110 v. 214; 111 v. 516.

SEC. 614-86. **[Jurisdiction vested with "the public utilities commission," powers and duties.]** The public utilities commission of the state of Ohio is hereby vested with power and authority to supervise and regulate each such motor transportation company in this state; to fix, alter and regulate rates; to regulate the service and safety of operation of each such motor transportation company; to prescribe safety regulations, and designate stops for service and safety on established routes, to require the filing of annual and other reports and of other data by such motor transportation companies; to provide uniform accounting systems; and to supervise and regulate motor transportation companies in all other matters affecting the relationship between such companies and the public to the exclusion of all local authorities in this state, except as hereinafter otherwise provided. The commission, in the exercise of the jurisdiction conferred upon it by its chapter, shall have

the power and authority to prescribe rules and regulations affecting such motor transportation companies, nothwithstanding the provisions of any ordinance, resolution, license or permit enacted, adopted or granted by any incorporated city or village, city and county, or county, and in case of conflict between any such ordinance, resolution, license or permit, the order, rule or regulation of the public utilities commission shall, in each instance prevail; provided that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with the provisions of this chapter; provided, further, that no motor transportation company operating under a certificate of convenience and necessity shall carry persons whose complete ride is wholly within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous thereto, except with the consent of such municipal corporation or municipal corporations.

HISTORY: — 110 v. 214; 111 v. 20.

By the Court. The chief controversy in this case turns upon the construction to be given Section 614-86, General Code (110 Ohio Laws, 214). An analysis thereof shows that the Commission is clothed with power and authority to do the following things: (1) Supervise and regulate motor transportation companies; (2) fix, alter, and regulate rates; (3) regulate service and safety of operation; (4) prescribe safety regulations and designate stops for service and safety on established routes; (5) require the filing of reports; (6) provide uniform accounting systems; (7) supervise and regulate motor transportation companies in all other matters affecting the relationship between such companies and the public. And by the terms of said section the power of municipalities to make reasonable local police regulations within their respective boundaries is recognized. Therefore the court is of opinion that, if the municipality does not interfere with the general powers of the Public Utilities Commission, it may, by suitable police regulations, control, direct, and manage its streets and the traffic thereon, and the conclusion reached is that these ordinances are not an unreasonable local police regulation relating to traffic, reciting as they do that it is intended to make the streets less congested and less dangerous to pedestrians and the public generally, and may be so enforced as not to materially lessen the efficiency of the utility. Of course, under the guise of so regulating traffic, a city may not materially interfere with the general efficiency of the utility authorized by the Public Utilities Commission within its jurisdiction.

These two powers, one of the state through the Commission, and the other of the municipality in the control of its streets, should be exercised together and consistently, and under the statute and under the Constitution this joint exercise of power is recognized, and no conflict should be permitted to arise which would lessen the sovereign power of the state and still preserve proper local self-government.

Since this action was begun, the Legislature has simplified the problem by further legislation, but the same can have no bearing in this action.

Entertaining the view that the ordinances of the city of Lorain are regulatory in character, and are reasonable police regulations which may be enforced so as not to materially lessen the efficiency of the utility sanctioned by the Commission, it is unnecessary to discuss other features of the case. It is therefore ordered that the findings of the Commission be reversed and the same remanded to the Com-

mission for further modification, alteration, and amendment of their orders in accordance with this opinion.

The Lorain Street Rd. Co. v. Public Utilities Commission of Ohio. 113 O. S. ——. Decided June 9, 1925.

Ordinances of a municipality passed under section 614-86, General Code, (see 110 Ohio Laws, p. 214), must be reasonable police regulations with reference to the use of the streets of such municipality and the control of traffic thereon, and not have for their purpose the material interference with and practical elimination of the efficiency of the service and accommodation of the public using an interurban bus transportation line, operating within the limits of such municipality over an interurban route along state highways between cities of this state, as sanctioned by the Public Utilities Commission pursuant to a certificate of convenience and necessity issued under authority. Section 614-88, General Code (see 110 Ohio Laws, p. 216).

Nelsonville v. Ramsey et al. 113 O. S. ——. Decided June 9, 1925.

Sections 614-86 to 614-102, inclusive, of the General Code of Ohio, are designed to regulate motor transportation governing all motor vehicles operating over the highways of the state, but do not authorize the public utilities commission to exclude motor transportation companies operating in interstate traffic from such highways.

Motor transportation companies operating in interstate traffic are subject to the provisions of said sections and the regulations therein provided may be applied to all interstate operators except in so far as such application would involve a direct burden upon interstate commerce.

A condition in a certificate of convenience and necessity granted to an interstate operation that passengers may not be received within the state of Ohio whose destinations are also within the state of Ohio, is not an unreasonable condition and does not operate as a direct burden upon interstate commerce.

The Cannon Ball Transportation Co. v. Public Utilities Commission of Ohio. 113 O. S. ——. Decided December 1, 1925.

SEC. 614-87. **[Certificate of Public convenience and necessity.]** No motor transportation company shall begin to operate any motor propelled vehicle for the transportation of persons or property, or both, for hire, between fixed termini or over a regular or irregular route in this state, without first obtaining from the public utilities commission a certificate declaring that public convenience and nesessity require such operation.

The commission shall have the power, after notice and hearing, when the applicant requests a certificate to operate in a territory already served by a motor transportation company holding a certificate of public convenience and necessity from the commission, to grant a certificate only when the existing motor transportation company or companies serving such territory do not provide the service required or the particular kind of equipment necessary to furnish such service to the satisfaction of the commission, and in all other cases, with or without hearing, to issue such certificates as prayed for, or to refuse to issue the same, or to issue them for the partial exercise only of the privileges sought, or to issue such certificates for the use of certain kinds of equipment and for the handling of certain kinds of material or merchandise over such routes, and may

attach to the exercise of the rights granted by such certificates, such terms and conditions as, in its judgment, the public convenience and necessity may require. Where a motor transportation company has been actually operating in good faith upon the date of filing the original act in the office of the secretary of state, April twenty-eight, nineteen hundred and twenty-three, it shall file with the commission an affidavit showing its principal place of business, full information concerning the physical property, the route over which it has been operating, the schedule or schedules, together with a map of its route, showing the number of miles of route in each municipality and county into, through or along which such route runs or extends, a statement that it has been actually operating over such route or routes in good faith, together with the liability insurance policy or policies required under section 614-99 of the General Code, and thereupon a certificate of public convenience and necessity shall issue, if the commission shall find the statements in said affidavit to be true. But no certificate shall be granted upon any such affidavit unless the same shall have been filed prior to the passage of this act.

Upon the payment of the fee provided under section 614-94 of the General Code to the commission, such motor transportation company may continue to operate and shall be governed in all respects as if such motor transportation company had made a written application.

Before granting any certificate the commission shall take into consideration other existing transportation facilities in the territory for which a certificate is sought, and in case it appears from the evidence that the service furnished by existing transportation facilities is reasonably adequate the commission shall not grant such certificate.

The commission may at any time for a good cause suspend, and upon at least five days' notice to the grantee of any certificate and an opportunity to be heard, revoke, alter or amend any certificate issued under the provisions of this chapter.

On finding of the public utilities commission that any motor transportation company does not give convenient and necessary service in accordance with the order of such commission such motor transportation company shall be given a reasonable time, not less than sixty days, to provide such service before any existing certificate is cancelled or a new one granted over the route mentioned in the finding and order of or hearing before the public utilities commission.

NOTE: — This section was amended in 111 v. 516.

HISTORY: — 110 v. 215; 111 v. 516.

The Public Utilities Commission issued a certificate of public convenience and necessity to a motor bus operator under Section 614-87, General Code (110 O. L., 215). Thereafter a rival common carrier filed a complaint, alleging that misstatements had been made in the affidavit of the motor bus operator upon which

the certificate was based, but not controverting any of the material statements set forth in the affidavit. Held, that the action of the Public Utilities Commission in overruling such complaint and denying a rehearing, without taking evidence upon the question of fact raised in the complaint, was not unreasonable, arbitrary and unlawful.

The affidavit required under Section 614-87, General Code, is prima facie evidence of the facts alleged therein. If the material facts set forth in such affidavit are not controverted the Public Utilities Commission, without further inquiry, may find such facts to be true, and thereupon issue a certificate of public convenience and necessity.

That part of Section 614-87, General Code, requiring the Commission to issue a certificate of public convenience and necessity to bus operators who were in good faith operating on the date of the filing of the act with the secretary of state, is a valid and constitutional enactment.

Cin. Trac. Co. v. Pub. Util. Com. 111 O. S. 681.

Since the Constitution of 1912 became operative, all municipalities derive all their "power of local self-government" from the Constitution direct, by virtue of Section 3, Article XVIII, thereof.

The power to establish, open, improve, maintain and repair public streets within the municipality, and fully control the use of them, is included within the term "power of local self-government."

The above constitutional grant of power to municipalities is "self-executing," in the sense that no legislative action is necessary in order to make it available to the municipality.

The exercise of "all powers of local self-government," as provided in Article XVIII, Section 3, is not in any wise dependent upon or conditioned by Section 7, Article XVIII, which provides that "a municipality may adopt a charter," etc.

The grant of power in Section 3, Article XVIII, is equally to municipalities that do adopt a charter as well as those that do not adopt a charter, the charter being only the mode provided by the constitution for a new delegation or distribution of the powers already granted in the Constitution. (State, ex rel. City of Toledo v. Lynch, Auditor, 88 O. S., 71, 102 N. E., 670, 48 L. R. A. (N. S.), Ann. Cas., 1914D, 949, disapproved upon the proposition that a charter is a prerequisite to the exercise of hume-rule powers under Section 3, Article XVIII.)

A municipal ordinance denying to a motor bus company for hire the right to use a municipal street for the purpose of a motor bus stop or station to let off or take on passengers is within the constitutional grant of municipal power, and therefore is a valid ordinance.

Perrysburg v. Ridgway, 108 O. S. 245.

Where there are more applicants for certificates of convenience and necessity to operate a motor bus line over a particular route between fixed termini than the public convenience and necessity require, and the Public Utilities Commission upon hearing issues a certificate of public convenience and necessity to such number of the applicants as it finds the public convenience and necessity require, and denies a certificate as to the other applicants, this court will not disturb such order, unless it affirmatively appears from the record that the order is unreasonable or unlawful.

Coach Co. v. Util. Comm. 110 O. S. 41.

In order to authorize the Public Utilities Commission to grant a motor bus company a certificate of public convenience and necessity, authorizing the motor bus company to operate its line and to serve the public with local service along a route already established by two other motor bus lines, by an interurban railroad and by two steam railroads furnishing numerous trains and commuting service, it must appear as a reasonable conclusion from the evidence that such bus companies,

the street railroad company and the steam railroads are not rendering adequate and convenient service, and that the operation of the third motor bus line can eliminate such inadequacy and inconvenience.

Cincinnati Traction Co. v. The Public Utilities Commission of Ohio. 112 O. S.

A certificate of public convenience and necessity is not an asset with which a receiver of a motor transportation company can be charged, or which he may sell and convert into an asset, nor is the right to a certificate of public convenience and necessity upon affidavit under Section 614-87, General Code, an asset of a receiver of a motor transportation company, which but for the appointment of the receiver would have been entitled to such a certificate, nor can the same be sold or transferred and converted into an asset.

Estabrook, Receiver, v. Public Utilities Commission of Ohio. 112 O. S. 417. April 21, 1925.

Operation prior to April 28, 1923, by an individual does not inure to the benefit of a corporation thereafter, or at that time, organized by him, so as to entitle it to a certificate of convenience and necessity, as a matter of right upon affidavit.

The Red Ball Transit Co. v. Public Utilities Commission of Ohio. 112 O. S. 462. Decided April 28, 1925.

1. A certificate of public convenience and necessity, issued by the Public Utilities Commission to a "person or persons, firm or firms, copartnership, or voluntary association" to operate "a motor transportation company" is a license personal in its character, and is not transferable, and does not pass by succession.

2. The provision of Section 614-87, General Code, relating to motor transportation companies actually in operation upon the date of the filing of the act in the office of the secretary of state, confers upon such motor transportation companies no rights different from the rights of holders of certificates who were not so operating, except in the manner of obtaining such certificate. The right to such certificate is no more the subject of succession or transfer than the certificate itself would be.

Westhoven et al., v. Public Utilities Commission of Ohio. 112 O. S. 411. Decided April 21, 1925.

1. A certificate of convenience and necessity issued to a motor transportation company by the Public Utilities Commission is a revokable license, which confers no property rights upon the holder thereof, and, for good cause shown, the same may at any time be revoked, altered, or amended by the commission.

2. Such right to revoke, alter, or amend applies equally to a certificate issued by virtue of an affidavit filed by motor transportation companies operating on or before April 28, 1923, and a certificate issued upon the written application of motor companies beginning operations after that date.

3. Any such order revoking, altering, or amending a certificate may be entered upon good cause shown upon not less than 5 days' notice to the holder thereof, and an opportunity to be heard.

4. Where a judgment has been entered by a court of competent jurisdiction in favor of a motor transportation company, based upon the operative provisions of a certificate of convenience and necessity issued by the Public Utilities Commission, and thereafter and during the pendency of error proceedings such certificate is altered or amended by the Commission in such manner as to nullify those provisions upon which the judgment is founded, a reviewing court is not authorized to further proceed. (Miner v. Witt, 82, O. S., 237, 92 N. E. 21.)

Scheible, Mayor, et al. v. Hogan.

Hogan, et al. v. Public Utilities Commission of Ohio. 113 O. S. ——. Decided June 9, 1925.

When a certificate of convenience has been refused by the commission because the affidavit is untrue, the supreme court on error will affirm the order unless the finding is against the weight of the evidence. Schelling v. Pub. Util. Com., 111 O. S. 410; Kennedy v. Pub. Util. Com., 111 O. S. 412.

Where the commission awarded a certificate, and on error the supreme court finds to be true the statements of the affidavit under G. C. Par. 614-87, the order will be affirmed. Becker v. Pub. Util. Com., 112 O. S. 565.

SEC. 614-87a. **[Effect of death or dissolution of partnership.]** Upon the death of a person operating as a motor transportation company under a certificate of public convenience and necessity, his personal representative or representatives may operate under such certificate while the same remains in force and effect, and, with the consent of the commission may transfer such certificate.

Upon the dissolution of a partnership operating as a motor transportation company under a certificate of public convenience and necessity, caused by death or otherwise, in the event the surviving or remaining partner or partners acquire the assets of the partnership, the partner or partners so acquiring such assets may continue to operate under such certificate while the same remains in force and effect, and, with the consent of the commission, may transfer such certificate; upon the dissolution of a partnership operating a motor transportation company under a certificate of public convenience and necessity, caused by death, in the event the surviving partner or partners do not acquire the assets of the partnership, then such surviving partner or partners and the personal representative or representatives of the deceased partner or partners may transfer such certificate with the consent of the commission.

In all other cases a certificate of public convenience and necessity shall not be transferred except with the consent of the commission, after a public hearing had thereon.

HISTORY: — 111 v. 517.

SEC. 614-88. **[Consent to operate must be first secured.]** Except as provided in section 614-84, no corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall operate any automobile, jitney, bus, truck, stage, auto stage, or rent for hire car, for the transportation of persons or property or both, for compensation, over any public street, road or highway in this state between fixed termini or over a regular or irregular route, over which any motor transportation company is operating under a certificate of convenience and necessity issued by the commission as provided in this act, until such corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall have secured a certificate of public convenience and necessity or permission from the commission to so

operate, and then only in strict accordance with such rules as the commission may prescribe for such operation.

HISTORY: — 110 v. 216.

SEC. 614-89. **[Applications and complaints made and filed with commission.]** In all respects in which the public utilities commission has power or authority under this act, applications and complaints may be made and filed with such commission, processes issued, hearings held, opinions, orders and decisions made and filed, petitions for re-hearings filed and acted upon, and all proceedings before the supreme court of this state considered and disposed of by such court in the manner, under the conditions and subject to the limitations and with the effect specified in the sections of the General Code governing the supervision of other public utilities by the commission.

HISTORY: — 110 v. 216.

SEC. 614-90. **[Rules governing application for certificates of public convenience and necessity.]** The commission shall adopt rules prescribing the manner and form in which such motor transportation companies as defined in this act shall apply for the certificates of public convenience and necessity. Among other rules adopted there shall be the following:

(a) Application shall be made in writing on the blanks furnished by the commission and shall show the principal office or place of business and residence of such motor transportation company.

(b) Shall contain full information concerning the physical property used or to be used by the applicant.

(c) The complete route over which the applicant operates or desires to operate, showing the number of miles of said route in each municipality and county.

(d) The proposed time schedule or schedules or time cards of the applicant, if operating between fixed termini or over a regular route.

(e) The schedule or tariff showing the passenger or freight rates to be charged between the several points, if operating between fixed terminals or over a regular route.

HISTORY: — 110 v. 216.

See 110 O. S. 1, cited under Section 614-84.

SEC. 614-91. **[Application shall contain map, indicating proposed route of operation; date for hearing.]** Such application shall contain a map, showing the highway or highways and public places upon and over which such motor transportation company is to operate, and the number and kind of motor vehicles to be used in carrying on the business of such motor transportation company. The applicant shall give notice of the fil-

ing of such application by publication made once a week for three weeks immediately prior to the day set for said hearing, in a newspaper of general circulation published at the county seat of each county in or through which the applicant proposes to operate, or in one newspaper published in and of general circulation throughout the territory in or through which the applicant proposes to operate. Such published notice shall state the fact that such application has been made, the route proposed to be operated, the number of motor vehicles to be used, the number of trips to be made daily, and the name and address of the applicant. Upon application for a certificate to operate between fixed termini or over a regular route, the commission shall give written notice of the filing of such application to all motor transportation companies, street railroads, interurban railroads and steam railroads operating in the territory through which the applicant proposes to operate. The commission shall, after the filing of such application, fix a date for hearing upon the same unless the commission in its discretion deems such hearing unnecessary and the best interests of the public require that said application be granted or rejected without such hearing. When a date for the hearing is fixed the commission shall give the applicant, all other motor transportation companies, street railroads, interurban railroads and steam railroads operating in the territory through which the applicant proposes to operate at least ten days' notice of such hearing. The applicant shall have the right, either before or after hearing or action by the commission to amend, modify or alter such application by filing with the commission an amendment to such application or a supplemental application which shall in turn be considered by the commission and be governed in the same manner as is provided in case of an original application.

HISTORY: — 110 v. 217; 111 v. 518.

1. Motor equipment employed in motor transportation service is not required by the Motor Transportation Act to be absolutely owned by the holder of a certificate of convenience and necessity; this being left to the discretion of the Public Utilities Commission.

2. An application before the Public Utilities Commission to change, extend, or shorten a route, or to increase or decrease the number of vehicles employed in motor transportation service under a certificate theretofore issued by the Commission, can only be heard by the Commission in accordance with the notice required by Section 614-91, General Code.

Northern Ohio Traction & Light Co. v. Public Utilities Commission of Ohio. 113 O. S. ——. Decided June 9, 1925.

SEC. 614-92. **[Operation restricted to specified routes.]** Except as otherwise expressly provided, is shall be unlawful for any motor transportation company as defined in this act to operate in this state on any route, other than the route provided for in the certificate granted by the commission; or to fail or refuse to operate on the whole of the route,

in the manner and at the time specified in the certificate; except in case of emergency due to the act of God or unavoidable accident or casualty or the route becoming impassable, or in case it becomes necessary to make temporary detours; and it shall be unlawful for any such motor transportation company to neglect or refuse to comply with and obey any and all regulations and orders of the commission and other statutory laws and regulations of the state of Ohio governing and applying to such motor vehicles, provided, however, that nothing in this act shall prohibit a motor transportation company as defined hereunder and not operating between fixed termini from making casual trips over routes established hereunder.

HISTORY: — 110 v. 217.

SEC. 614-93. **[New application may be filed.]** Any motor transportation company as defined in this chapter may, at any time after a certificate is granted or refused, file a new application or supplement any former application, for the purpose of changing, extending or shortening the route, or increasing or decreasing the number of vehicles, or for the doing of any other act or thing which the applicant might be permitted to do under the general statutory laws and regulations of the state of Ohio.

HISTORY: — 110 v. 218.

SEC. 614-94. **[Taxes paid to treasurer of state; rates.]** Every motor transportation company now operating or which shall hereafter operate in this state shall at the time of the issuance of such certificate, and annually thereafter on or between January 1st and January 15th of each calendar year, pay to the treasurer of state the following taxes for the expense of the administration and enforcement of the provisions of sections 614-84 to 614-102 of the General Code, and for the maintenance and repair of the highways of the state; all taxes levied upon the issuance of a certificate to any motor transportation company shall be reckoned as from the beginning of the quarter in which such certificate is issued.

For each motor propelled vehicle operating between fixed termini or over a regular route, carrying seven passengers or less, forty dollars; for each such motor propelled vehicle carrying more than seven but not more than twelve passengers, ninety dollars; for each such motor propelled vehicle carrying more than twelve but not more than eighteen passengers, one hundred and forty dollars; for each such motor propelled vehicle carrying more than eighteen but not more than twenty-four passengers, one hundred and eighty dollars; and for each such motor propelled vehicle carrying more than twenty-four passengers, two hundred and thirty dollars.

For each motor propelled vehicle not operating between fixed termini or over a regular route, carrying seven passengers or less, twenty dollars; for

each such motor propelled vehicle carrying more than seven but not more than twelve passengers, fifty dollars; for each such motor propelled vehicle carrying more than twelve but not more than eighteen passengers, ninety dollars; for each such motor propelled vehicle carrying more than eighteen but not more than twenty-four passengers, one hundred and fifteen dollars; and for each such motor propelled vehicle carrying more than twenty-four passengers, one hundred and fifty dollars.

For each motor propelled vehicle used for transporting property between fixed termini or over a regular route the manufacturer's rated carrying capacity of which is one and three-fourths tons or less, forty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than one and three-fourths tons but but not more than two and one-half tons, eighty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than two and one-half but not more than three and one-half tons, one hundred and forty dollars; and for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than three and one-half tons, two hundred dollars.

For each motor propelled vehicle used for transporting property not between fixed termini or over a regular route the manufacturer's rated carrying capacity of which is one and three-fourths tons or less, twenty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than one and three-fourths but not more than two and one-half tons, fifty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than two and one-half but not more than three and one-half tons, one hundred dollars; and for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than three and one-half tons, one hundred and fifty dollars.

For each motor propelled vehicle used by any such company for transporting both persons and property simultaneously the tax shall be computed on the basis of either tonnage or passenger capacity and the basis which yields the greater revenue shall apply.

A trailer used by a motor transportation company hereunder shall be taxed at a rate equal to twenty per cent of that levied upon the vehicle by which it is drawn.

In case of emergency, or unusual temporary demands for transportation, the taxes for additional motor propelled vehicles for limited periods shall be fixed by the commission in such reasonable amounts as may be prescribed by general rule or temporary order.

HISTORY: — 110 v. 218.

Sec. 614-94a. **[Operation of any motor propelled vehicle over irregular route; when.]** When any motor transportation company holds a certificate for operation between fixed termini or over a regular

route and also holds a certificate for operation over an irregular route, such motor transportation company may operate over such irregular route and in such irregular service any motor propelled vehicle upon which the tax for operation over a regular route has been paid as required by the provisions of this chapter without the further payment of the tax required of motor propelled vehicles operating over irregular routes.

HISTORY: — 111 v. 518.

SEC. 614-95. **[Duties of treasurer of state with regard to taxes.]** The treasurer of state shall open an account with each municipal corporation and county into, through or along which the route of each such motor transportation company runs or extends, and shall apportion fifty per cent of the taxes imposed by section 614-94 in accordance with the lineal miles of route in each municipal corporation and county. The remaining fifty per cent of such taxes shall belong to the state of Ohio and shall be paid into the state treasury to the credit of the state maintenance and repair fund.

The treasurer of state shall be the custodian of such funds and shall disburse the same in the manner provided in section 614-96 of the General Code. The treasurer of state is hereby authorized to deposit any portion of the funds due municipal corporations and counties into, through or along which the route runs or extends, not needed for immediate distribution, in the same manner and subject to all provisions of law with respect to the deposit of active state funds by such treasurer; and all interest earned by such funds so deposited shall be collected by him and placed in the state treasury to the credit of the "state maintenance and repair fund." On the first business day of each month, the auditor of state on the requisition of the treasurer of state shall draw and transmit to the auditor of each county a warrant on the treasurer of state for the amount of the tax collections apportioned to the municipal corporations and counties into, through or along which the route of such motor transportation company runs and extends, accompanying the same with a statement showing the distribution of the amount represented thereby to each such municipal corporation or county. The county auditor shall certify the amount so transmitted into the county treasury to be disposed of as herein provided.

HISTORY: — 110 v. 219.

SEC. 614-96. **[Distribution of revenue.]** The revenue collected under the provisions of section 614-94 of the General Code, shall be distributed as follows:

(1) Fifty percentum of all taxes collected under section 614-94 of the General Code shall be for the use of the municipal corporations or

counties into, through and along which the route of such motor transportation company runs and extends. Such moneys shall be paid into the treasury of the proper county as provided herein and the proper portions distributed to the municipal corporations in accordance with the miles of route in such municipal corporation. In the treasuries of such municipal corporations and counties, such money shall constitute a fund which shall be used for the maintenance and repair of public roads, highways and streets and for no other purpose and shall not be subject to transfer to any other fund. "Maintenance and repair" as used in this section includes all work done upon any public road or highway or upon any street, in which the existing foundation thereof is used as the sub-surface of the improvement thereof, in whole or in substantial part.

(2) The "state maintenance and repair fund" shall be available for the use of the public utilities commission of Ohio in defraying the expenses incident to maintaining the bureau of the department for the carrying out and enforcing the provisions of sections 614-84 to 614-102, inclusive, of the General Code, including the payment of salaries, traveling expenses, printing and other expenses, and for the use of the director of highways and public works in the manner provided by law. The General Assembly shall make appropriations therefrom for such purpose.

HISTORY: — 110 v. 220.

SEC. 614-97. **[Qualifications of chauffeur or driver. Examination and license.]** It shall be unlawful for any motor transportation company as defined in this chapter to cause, allow or permit any motor propelled vehicle operated by it as a motor transportation company to be driven by any person under the age of twenty-one years; and such person shall be an American citizen and shall be skilled in the art of driving such motor vehicle, and without physical disability or personal habits which would disqualify him or make him an unsuitable person to serve as driver of such public motor vehicle.

For the purpose of determining the qualifications of such chauffeur or driver, the secretary of state shall be governed by section 6302 of the General Code, in so far as the same may be applicable. Upon the issuance of the certificate to drive, the applicant shall pay the registration fee and no further fee shall be charged or examination required by the state or any local authorities in the state. The term "local authorities" as used herein means all officers, boards and commissions of counties, cities, villages or townships. In case of sickness, accident or other emergency, any other licensed driver may be substituted.

HISTORY: — 110 v. 221.

Before a person may act as chauffeur of a motor vehicle under House Bill

474, he shall be registered as provided under section 6302 and such registration shall be annual as required by Section 6297 G. C.

Op. Atty. Gen. (1923), p. 391.

SEC. 614-98. **[Fees, charges, etc.]** The fees and charges provided under section 614-94 of the General Code shall be in addition to taxes, fees and charges fixed and exacted by other provisions of the general laws of Ohio; except the assessments required by section 606 of the General Code, but all fees, license fees, annual payments, license tax, or taxes or other money exactions, except the general property tax, assessed, charged, fixed or exacted by local authorities, such as municipalities, townships, counties, or other local boards, or the officers of such subdivisions shall be deemed to be illegal and be superseded by this act. On such motor transportation company complying with the provisions of this act, all local ordinances, resolutions, by-laws and rules in force shall cease to be operative as to them, except that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with the provisions of this act.

HISTORY: — 110 v. 221.

SEC. 614-99. **[Filing of liability insurance policy or bond with commission; provisions therefor.]** No certificate of convenience and necessity shall be issued by the commission to any motor transportation company until such motor transportation company shall have filed with the commission a liability insurance policy or bond satisfactory to the commission in such sum and with such other terms and provisions as the commission may deem necessary adequately to protect the interests of the public having due regard for the number of persons and amount of property affected, which policy, policies or bonds shall insure the motor transportation company against loss sustained by reason of the death of or injuries to persons and for loss of or damage to property resulting from the negligence of such motor transportation company, and shall have filed with the commission a freight cargo insurance policy or bond adequately to protect the interests of the shipping public, which policy or bond shall insure the motor transportation company against all loss in excess of fifty dollars sustained by reason of any loss or damage to the property being transported.

Such policy or bond shall further provide that ten days' notice in writing shall be given to the public utilities commission of intention to cancel such policy of insurance.

If such policy or bond is cancelled during the term thereof or in event the same should lapse for any reason, the commission shall require such motor transportation company to replace such policy or bond with another fully complying with the requirements of this section, and in default thereof the certificate shall be deemed revoked.

HISTORY: — 110 v. 221; 111 v. 519.

SEC. 614-100. **[Penalty for violation.]** Every officer, agent or employe of any corporation, and every other person who violates or fails to comply with or who procures, aids or abets in the violation of any provision of sections 614-84 to 614-102, inclusive, of the General Code, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, of the public utilities commission, or who procures, aids or abets any corporation or person in his failure to obey, observe or comply with any such order, decision, demand or regulation, or any part or provision thereof, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

HISTORY:—110 v. 222.

SEC. 614-101. **[Interstate commerce only.]** Neither sections 614-84 to 614-102, inclusive, of the General Code, nor any provisions thereof, shall apply or be construed to apply to commerce with foreign nations or countries, or among the several states of this Union, except in so far as the same may be permitted under the provisions of the constitution of the United States and the acts of congress.

HISTORY:—110 v. 222.

SEC. 614-102. **[Each section and part thereof independent.]** Each section of this act, and every part thereof, is hereby declared to be independent sections and parts of sections, and the holding of any section or part thereof to be void or ineffective for any cause shall not affect any other section or part thereof.

HISTORY:—110 v. 222.

Sec. 6292 was also a part of the original Freeman-Collister Act.

CHAPTER XVII

Mechanics' Liens

SEC. 8324. **[Mechanic's lien; time for filing statement.]** Any sub-contractor, material man, laborer or mechanic, who has performed labor or furnished material, fuel, or machinery, who is performing labor or furnishing material, fuel or machinery, or is about to perform labor, or furnish material, fuel or machinery, for the construction, alteration, removal, or repair of any property, appurtenance or structure, described in sections eighty-three hundred and eight and eighty-three hundred and sixteen, or for the construction, improvement or repair of any turnpike, road improvement, sewer, street or other public improvement, or public building provided for in a contract between the owner, or any board, officer or public authority and a principal contractor, and under a contract between such sub-constractor, material man, laborer or mechanic and a principal contractor or sub-contractor, at the time of beginning to perform such labor or the delivery of the fuel or machinery, or at any time, not to exceed four months from the performance of the labor or the delivery of the machinery, fuel or material, may file with the owner, board or officer, or the authorized clerk or agent thereof, a sworn and itemized statement of the amount and value of such labor performed, and to be performed, material, fuel or machinery furnished, containing a description of any promissory note or notes that have been given by the principal contractor or sub-contractor on account of the labor, machinery or material, or any part thereof, with all credits and set-offs thereon, and proof that the sworn and itemized statement above provided for was mailed by registered letter to the address of the owner, board or officer, shall be taken as prima facie evidence of the filing thereof with the owner, board or officer, as herein provided.

HISTORY: — 97 v. 500; 101 v. 229.

1. Funds in the county treasury appropriated for and applicable to contracts entered into by the county for highway improvement are subject to the provisions of Sections 8324 to 8331 G. C., allowing liens in favor of sub-contractors, laborers, material-men and mechanics.

2. By reason of the amendment of section 1208 G. C., in 109 O. L. 159, contracts entered into by the state under the state aid highway laws (sections 1178 to 1231-7 G. C.) subsequent to the going into effect of said amendment, are not subject to lien under the provisions of sections 8324 to 8331 G. C., or otherwise, either as to funds in the state treasury or in the county treasury applicable to such contracts.

Op. Atty. Gen. (1922), p. 1084.

SEC. 8325. **[Upon such notice owner shall retain subsequent payments.]** Upon receiving the notice required by the next preceding section, such owner, board or officer or public authority or authorized clerk, agent or attorney thereof, shall detain in his hands all subsequent payments from the principal or sub-contractor to secure such claims and the claims and estimates of other sub-constractors, material men, laborers, mechanics, or persons furnishing materials to or performing labor for any contractor or sub-conrtactor who intervenes before the next subsequent payment under the contract, or within ten days thereafter.

HISTORY: — R. S. § 3194; 84 v. 48; 91 v. 135; 95 v. 211; 97 v. 501.

SEC. 8326. **[Filing of statement to notify fellow-laborer.]** Such subcontractor, material man, mechanic, laborer or person so filing his statement with the owner, board, officer, or authorized clerk or agent or attorney thereof, in order to notify his fellow subcontractors, material men, mechanics and laborers, at the same time shall file a copy thereof with the recorder of the county where such property is situated. If he fails so to do, the filing of the notice with the owner, board, officer, or authorized clerk, agent or attorney thereof shall give him no preference over other claimants.

HISTORY: — R. S. § 3195; 91 v. 135; 95 v. 211; 96 v. 7; 97 v. 501.

SEC. 8327. **[Recorder's fees.]** For filing or making a copy of such statement or certificate of the date of such filing the recorder shall be entitled to the same fees as are provided by law for similar services in regard to chattel mortgages.

HISTORY: — R. S. § 3195; 95 v. 211; 96 v. 7; 97 v. 501.

SEC. 8328. **[Pro rata payment of subcontractors out of subsequent payments.]** All other subcontractors, material men, laborers, mechanics or persons furnishing material, fuel or machinery who, before the first subsequent payment falls due after the deposit of a copy of such statement with the county recorder by any subcontractor, material or machinery man, laborer, or person furnishing material, or within ten days thereafter, file with such owner, board, officer or authorized clerk, agent or attorney thereof, a sworn and itemized statement or estimate of the labor, machinery, fuel or material furnished or to be furnished by them under a contract with a principal or subcontractor, containing a description of any promissory note or notes given therefor, or any part thereof, shall be paid pro rata with the person first so filing such statement and with each other, out of such first and other subsequent payments so falling due. Upon failure so to do, they shall have no recourse against the owner, board, officer, or the clerk or agent thereof for any

prior payments made under his contract with his head contractor or subcontractor.

HISTORY: — R. S. § 3197; 91 v. 135; 95 v. 212; 97 v. 501.

SEC. 8329. **[Copy of statement to be furnished to head contractor.]** The owner, board, officer, or clerk, agent or attorney thereof, upon the receipt of such statement shall, or the lien claimant, his agent or attorney, in the name of such owner, board or officer, may, furnish the principal contractor, or subcontractor with a copy thereof, within five days after receiving it. If such principal or subcontractor fails within five days after such receipt by him, to notify, in writing such owner, board, officer, or clerk, agent or attorney thereof of his intention to dispute such claim, he shall be considered as assenting to its correctness. Thereupon such subsequent payment shall be applied by such owner, his agent or attorney, pro rata, upon such claim, and the amounts, when due, of such claim or estimates as have been meanwhile filed by other subcontractors, material men, laborers, mechanics or persons furnishing materials, and assented to or adjusted as provided for in this chapter, before the first of such subsequent payments fall due, or within ten days thereafter.

HISTORY: — 97 v. 502.

SEC. 8331. **[Remedy of subcontractor when his contractor or owner, etc., refuses to pay.]** If a head contractor or subcontractor neglects or refuses to pay, within five days after his assent to or adjustment of any claim, the amount thereof, and costs incurred, to the subcontractor or material man, laborer or mechanic, the owner, board, officer or clerk or agent thereof, when due, shall pay the whole or a pro rata amount thereof as the case may be, as above provided out of payments subsequently falling due. On his failure so to do, within ten days thereafter, the subcontractor or material man, laborer, mechanic or person furnishing material, when due, may recover against the owner, in an action for money had or received the whole or pro rata amount, as the case may be, of his claim or estimate, not exceeding in any case the balance due the principal contractor.

HISTORY: — R. S. § 3200; 91 v. 137; 95 v. 212; 97 v. 502.

SEC. 8332. **[Subcontractor may obtain lien on the property of the owner.]** If out of subsequent payments, as they severally fall due under the contract, and for ten days thereafter, the owner or his authorized agent neglects or refuses to pay, when due, the whole or a pro rata amount, as the case may be, of the sworn statement or estimate of any subcontractor, material man, laborer, or mechanic, within four months thereafter he shall file with the recorder of the county wherein the

property is situated an affidavit containing an itemized statement and description of any note with the amount and value of such labor, machinery, or material with all credits and set-offs thereon, together with the statements required by sections eighty-three hundred and fourteen and eighty-three hundred and fifteen or eighty-three hundred and seventeen, as the case may be, from principal contractors, and shall thereby have a lien to secure the payment of such claim upon the boat, vessel, or other water craft, or upon the house, mill, manufactory, building appurtenance, fixture, bridge, or other structure or gas well, oil well or other well upon which the labor was done, or machinery or material were furnished, and upon the interest of the owner in the lot of land on which it stands, or to which it may be removed, which lien shall date back to the date of the furnishing of the first item if such labor, machinery or material and have the same operation, effect and duration, and be subject to the same obligation with respect to the owner, as the lien of a head contractor in similar cases.

HISTORY: — 97 v. 502.

CHAPTER XVIII

Miscellaneous

PLANNING COMMISSIONS

SEC. 3586-1. **[Planning commission or council must approve plat; territory within three miles of corporation.]** Whenever a city planning commission of any city shall have adopted a plan for the major streets or thoroughfares and for the parks and other open public grounds of said city or any part thereof or for the territory within three miles of the corporate limits thereof or any part thereof except a part lying within a village, then no plat of a subdivision of land within said city or part thereof or said territory or part thereof shall be recorded until it has been approved by such city planning commission and such approval be endorsed in writing on the plat. If such land lies within three miles of more than one city, then this section shall apply to the approval of the planning commission of the city whose boundary is nearest to the land. When a village planning commission shall have adopted a plan for the major streets and thoroughfares and parks and other public grounds of such village or any part thereof, then no plat of a subdivision of land within said village or part thereof shall be recorded until it has been approved by such village commission and such approval endorsed in writing on the plat. The approval of the planning commission, platting commissioner or village council, required by this section, or the refusal to approve, shall take place within thirty days from and after the time of the submission of the plat for approval; otherwise such plat shall be deemed to have been approved, and the certificate of such planning commission, platting commissioner or of the clerk of such council as to the date of the submission of the plat for approval and the failure to take action thereon within such time, shall be issued on demand and shall be sufficient in lieu of the written endorsement or other evidence of approval herein required. The ground of refusal or approval of any plat submitted, including citation of or reference to the rule or regulation violated by the plat, shall be stated upon the record of the commission, commissioner or council. Any planning commission, platting commissioner or village council may adopt general rules and regulations governing plats and subdivisions of land falling within its jurisdiction to secure and provide for the coordination of the streets within the subdivision with existing streets and roads or with city or village plan or plats, for the proper amount of open spaces for traffic, circulation and utilities and for the avoidance of future congestion of population detrimental to the public health or safety; but such rules and regulations shall not require the dedication to the general public of open grounds or spaces other than streets

and ways, nor impose a greater minimum lot area than thirty-five hundred square feet, nor any requirement as to the minimum percentage of lot occupancy, nor as to the height, bulk, location or use of buildings; and minor streets shall not be required to be wider than fifty feet. Such rules and regulations shall be promulgated and published as is provided by law for the promulgation and publication of ordinances and before adoption a public hearing shall be held thereon and a copy thereof shall be certified by the commission to the county recorder of the county in which the municipality is located. Nothing herein contained shall be construed to impair, modify or postpone any power over or concerning the platting and subdivision of land or the recording of plats of subdivisions granted to a city or other planning commission by any other section of the General Code; but when a plan has been adopted as provided in this section the approval of plats provided for herein shall be in lieu of the approvals provided for by any other section or sections of the General Code, so far as territory within the approving jurisdiction of the planning commission, as provided in this section, is concerned.

HISTORY: — 110 v. 71.

SEC. 4366-13. **[Regional planning commissions.]** The city planning commissions of any municipality or group of municipalities, and the county commissioners of any county or counties in which such municipality or group of municipalities is located or any adjoining county or counties may co-operate in the creation of a regional planning commission for any region defined as may be agreed upon by said planning commissions and county commissioners, exclusive, however, of any territory within the limits of a municipal corporation not having a city planning commission. The number of members of such commssion, their method of appointment and the proportion of the costs of such regional planning to be borne respectively by the various municipalities and counties in the region shall be such as may be determined upon by said planning commissions and county commissioners. Such county commissioners and the councils or other legislative bodies of such municipalities, are hereby authorized to appropriate their respective shares of such costs. The sums so apropriated shall be paid into the treasury of the county in which the greater portion of the region is located and shall be paid out on the certificate of the regional planning commission and the warrant of the auditor of such county for the purposes herein authorized. Within the amounts thus agreed upon and duly appropriated, said regional planning commission may employ such engineers, accountants and other employes as may be necessary.

HISTORY: — 110 v. 310.

SEC. 4366-14. **[Organization and maintenance; terms of members.]** The board of county commissioners of any county may and,

on petition of the city planning commissions of a majority of the municipalities in such county having such planning commission, shall provide for the organization and maintenance of a county planning commission. Such planning commission shall consist of eight citizens of the county appointed by the board of county commissioners, together with the members of the board of county commissioners. If, the population of any city in the county exceeds fifty per cent of the total population of the county, then at least three of the appointive members shall be selected from persons nominated by the city planning commission of such city. The appointive members shall be appointed for terms of three years, except that of the eight members first appointed three shall be appointed for terms of two years and two shall be appointed for a term of one year. The members shall serve without pay. The county planning commission may employ such engineers, accountants and other employes as may be necessary. Their compensation and the expenses of the appointive members of the county planning commission shall be paid from appropriations made by the county commissioners.

HISTORY:—110 v. 311.

SEC. 4366-15. **[Powers and duties.]** The powers and duties respectively of a regional or county planning commission shall be to make plans and maps of the region or county respectively, showing the commission's recommendation for systems of transportation, highways, park and recreational facilities, the water supply, sewerage and sewage disposal, garbage disposal, civic centers and other public improvements which affect the development of the region or county respectively as a whole or more than one political unit within the region or county and which do not begin and terminate within the boundaries of any single municipality.

HISTORY:—110 v. 311.

SEC. 4366-16. **[Certified copies of plans to each municipality.]** The regional planning commission of any region or county planning commission of any county, shall, after making the regional or county plan, certify a copy thereof to the city planning commission of each municipality of the region or county and the county commissioners of each county or part of county included in the plan. In the event of the subsequent creation of a city planning commission for any municipality within a county having a county planning commission, or for any municipality subsequently incorporated within the area of a region having a regional planning commission, a copy of the county plan shall be immediately certified to such city planning commission.

HISTORY:—110 v. 311.

SEC. 4366-17. **[Effect of adoption of plans.]** The city planning

commission of any municipality to which a regional or county plan is so certified, may adopt such plan, and it shall thereupon and thereafter have the same force and effect within such municipality as is provided by law or charter for plans prepared and adopted by the local planning commission. The county commissioners of any county may adopt such plan so far as it relates to non-municipal territory. Thereafter no public building, roadway, bridge or viaduct or other public improvement or utility (whether publicly or privately owned), whose construction or location would constitute a departure from the plan, shall be constructed or authorized by the county commissioners except by unanimous vote. Such plans shall not designate the specific lots or parcels of land upon which said system, facilities, buildings and improvements are proposed to be placed, but only the general site or location thereof. The effect of the adoption of such plan by the county commissioners shall cease as regards the location of any sewage or garbage disposal plant and no official action of the county commissioners shall be controlled thereby in such respect, unless the site shown on the plan as the location of such plant is purchased within six months after the adoption of such plan by the county commisisoners, or unless proceedings for the appropriation of the necessary property are commenced within such period of six months and such property is then or thereafter appropriated in such proceedings.

HISTORY: — 110 v. 312.

SEC. 4366-18. **[County surveyor shall assist.]** The county surveyor of the county or counties, for which any regional or county planning commission has been organized, shall give, within the scope of his resources and without interference with his regular duties, such assistance to the commission as may be requested by it.

HISTORY: — 110 v. 312.

SEC. 4366-19. **[Plans to be filed with county recorder.]** Whenever a county or regional plan is adopted by a city planning commission or by the county commissioners, the fact of such adoption shall be certified by the adopting authority to the regional or county planning commission, as the case may be. Thereupon such regional or county planning commission shall deposit a copy of so much of such regional or county plan as is affected by such adoption in the office of the county recorder; but in case such plan shows a recommendation as to the location of a sewage or garbage disposal plant, such deposit shall not be made until after six months from and after the adoption of such plan, and when so deposited the copy of such plan shall also state the action or non-action of the appropriating authority with respect to the purchase or ap-

propriation of property for such plant, as provided in section 5 of this act.

HISTORY: — 110 v. 312.

SEC. 6906-1. **[Maintenance of streets in newly platted territory; apportionment of tax levy, per centum.]** Whenever any territory outside of the limits of a municipal corporation having a planning commission or a platting commissioner, and within three miles of the corporate limits of such municipality, shall have been platted into building lots and the plan of the streets therein set forth approved by such planning commission or platting commissioner, and the plat of such addition shall have been regularly filed in the office of the recorder of the county, all streets in such newly platted territory shall be under the control and supervision of the board of commissioners of the county. The board of county commissioners may cause to be expended each year on the maintenance of the streets in such newly platted territory, until such time as such streets shall have been permanently improved or such territory shall have become a part of a municipal corporation, a sum equal to not more than fifty per cent of the moneys levied or collected during such year as taxes from said newly platted territory, for road or highway purposes. Provided, however, that the provisions of this section shall not apply to any existing or outstanding levies against said newly platted territory heretofore made.

HISTORY: — 111 v. 410.

SEC. 5809. **[Certain animals not to run at large.]** A person, firm or corporation being the owner or having the charge of horses, mules, cattle, sheep, goats, swine, dogs or geese, shall not permit them to run at large in the public road, highway, street, lane or alley, or upon unenclosed land or cause such animal to be herded, kept or detained for the purpose of grazing on premises other than those owned or occupied by the owner or keeper thereof, except as provided in section fifty-eight hundred and eleven.

HISTORY: — R. S. 4202; 78 v. 18; 93 v. 129; 110 v. 119.

The owner of a domestic animal is responsible for negligence in its keeping whereby damage is occasioned.

It is a question of fact for the jury whether an owner of horses who turns them loose unattended into a field adjacent to a much traveled highway in the night time, the fence of which field is in such defective condition that the horses may easily stray out onto the highway, could have anticipated that one of the horses would stray out onto the highway and collide with an automobile thereon.

Drew v. Gross, 112 O. S. 485. Decided April 28, 1925.

SEC. 7214. (No change since 1922 edition.)

Trustees of a township, owning a stone or gravel quarry, cannot purchase

additional lands for such quarry without the submission of the question to the voters of the township and their approval thereof.

Op. Atty. Gen. (1923), p. 33.

See Opinions of Attorney General (1925), No. 2557, cited under Sec. 3370.

SEC. 7421. **[How surplus of tax to be disposed of.]** All money assessed and collected under the provisions of section seventy-four hundred and nineteen, which remains in the hands of the county treasurer, unexpended and unappropriated, for a period of six months after the annual September settlement for the fiscal year during which the tax was collected, shall be paid to the township or treasurer of the municipal corporation from which it was collected, and be expended on the public roads, under the direction of the trustees of the proper township or municipal corporation, in such manner as seems to them most advantageous to the interest of the township or corporation, for the construction, reconstruction, or repair of roads, and in building or repairing bridges.

HISTORY:—R. S. 4921; 70 v. 118; 110 v. 33.

SEC. 7464. (No change since 1922 edition.)

In performing the mandatory duty of keeping township roads in good repair, imposed by the provisions of Sections 3370 and 7464 of the General Code, township trustees may appropriate and use township road funds in the construction and maintenance of bridges and culverts on township roads within their respective jurisdictions.

Opinion found in Volume 2, page 1813 of the Opinions of the Attorney General for 1917, modified.

Op. Atty. Gen. No. 2557, June 10, 1925.

See Opinions of Attorney General (1925), No. 2839, cited under Sec. 6926.

SEC. 7465. (No change since 1922 edition.)

See Opinions of Attorney General (1925), No. 2839, cited under Sec. 6926.

SEC. 7466. (No change since 1922 edition.)

SEC. 7467. (No change since 1922 edition.)

In performing the mandatory duty of keeping township roads in good repair, imposed by the provisions of Sections 3370 and 7464 of the General Code, township trustees may appropriate and use township road funds in the construction and maintenance of bridges and culverts on township roads within their respective jurisdictions.

Opinion found in Volume 2, page 1813 of the Opinions of the Attorney General for 1917, modified.

Op. Atty. Gen. No. 2557, June 10, 1925.

County commissioners are not authorized, by Section 7467 of the General Code or elsewhere in the statutes, to make a contribution in money to a village of

an amount representing a proportion of the cost of the improvement of a village street, which is also a county road.

Op. Atty. Gen. No. 2943, Nov. 14, 1925.

SEC. 7468. (No change since 1922 edition.)
See 112 O. S. 385, as cited under Sec. 9180.
Sec. 7479. (No change since 1922 edition.)

Defenses in an answer of a railway company directed to the regularity of a proceeding to improve a road by paving, while good when made in a proper jurisdiction and as against a proper cause of action, are improper defenses where the issue raised in a quo warranto proceeding begun in the court is whether or not the railway company has misused a franchise conferred upon it by law, or has exercised it in contravention of law.

Where a franchise which furnishes the right of an electric railway company to use a public highway provides that "said railway shall be removed to the center of the highway as said highway is permanently improved by paving" and that "reasonable notice shall be given of the intention to improve said roadway by paving," and further that "whenever the remainder of said highway is permanently improved * * * said grantee shall, simultaneously with said improvement * * * pave between the rails," etc., and reasonable notice of the intention to permanently improve by paving a section of that roadway is given to the railway company, and the proceedings for the improvement are begun and the contract let, notices covering that action being also given to the company the refusal to remove the tracks to the center of the highway or to lay the tracks in the center of the roadway and pave between the rails is violative of the terms and amounts to a misuser of the franchise.

In such a case, quo warranto instituted by the attorney general on relation of the state is a proper remedy, although another remedy may be provided for in the franchise.

State, ex rel., v. C., D. & M. Co., 104 O. S. 120.

AN ACT

Authorizing the construction of a road between inter-county highway No. 124 and Serpent Mound park in Adams county.

SECTION 1. The department of highways and public works of Ohio is hereby authorized to construct an improved highway from Locust Grove, Adams county, located on inter-county highway No. 124, to the entrance to Serpent Mound park, a distance of approximately four miles, and to construct or repair bridges and culverts thereon.

SECTION 2. In the construction of such improvement, the director of highways and public works may purchase such equipment and materials, and employ such labor as may be deemed necessary, to execute the construction of said highway and the bridges and culverts thereon, or he may proceed and let contracts therefor in accordance with the provisions of sections 1206, 1207, 1207-1 and 1209 of the General Code.

SECTION 3. The construction of such road shall be done by force account, but shall not be begun until agreements, approved by the attorney general, have been entered into between the department of highways and public works and one or more of the abutting property owners, by which such abutting property owners agree to contribute and furnish, without cost, suitable materials to be used in the construction of such road. After entering into such agreement with the abutting property owners, the department of highways and public works shall begin the construction of such road immediately upon the taking effect of this act.

SECTION 4. There is hereby appropriated to the department of highways and public works, out of any money in the state treasury to the credit of the general revenue fund and not otherwise appropriated, the sum of ten thousand dollars for the payment of the costs and expenses of the improvement provided for in this act.

HISTORY:—111 v. 105.

AN ACT

To authorize the county commissioners of Meigs county and of Athens county to assume the assessments against abutting property owners on certain sections of intercounty highway No. 159.

SECTION 1. The county commissioners of Meigs county in which are located inter-county highway No. 159-"K", inter-county highway No. 159-"L", inter-county highway No. 159-"M", and inter-county highway No. 159-"O" and of Athens county in which are located inter-county highway No. 159-"P" and inter-county highway No. 159-"M-1", may assume any or all of the assessments which were or may be made against the owners of abutting property on said highways and pay same out of the highway funds of said county.

HISTORY—111 v. 511.

154-40 7
614-2 177
614-2a 179
614-84 179
614-85 181
614-86 181
614-87 183
614-87a 187
614-88 187
614-89 188
614-90 188
614-91 188
614-92 189
614-93 190
614-94 190
614-94a 191
614-95 192
614-96 192
614-97 193
614-98 194
614-99 194
614-100 195
614-101 195
614-102 195
1178 7
1189 8
1189-1 9
1190-2 10
1191 11
1192 12
1193-1 12
1193-2 12
1193-3 13
1197-1 13
1198 13
1200 14
1202 14
1204 15
1206 16
1208 17
1209 18
1211 18
1212 19
1213 19
1213-1 19
1214 20
1214-3 22
1217 24
1218 25
1219 25
1222 25
1224 27
1224-2 28
1231- 29
1231-8 29
1231-9 30
1231-10 30
2288-2 142
2295-6 142
2295-7 143
2295-8 143
2295-9 144
2295-10 145
2295-11 146
2295-12 146
2295-13 146
2295-14 146
2295-15 148
2344 80
2345 80
2400 43
2408 43
2412-1 43
2412-2 44
2421 44
2432-1 45
2434 45
2504-1 52
2782 68
2792 68
2792-1 68
2976-26 148
3270-1 74
3277 74
3298-13 74
3298-20 74
3298-23 74
3370 74
3371-1 75
3373 75
3428 76
3429 76
3430 76
3431 76
3432 77
3433 77
3434 77
3435 77
3436 78
3437 78
3438 78
3439 78
3440 79
3440-1 79
3586-1 200
4366-13 201
4366-14 201
4366-15 202
4366-16 202
4366-17 202
4366-18 203
4366-19 203
5526 169
5527 170
5528 171
5529 171
5530 172
5531 172
5532 172
5533 173
5534 173
5535 173
5536 174
5537 174
5538 175
5539 176
5540 176
5630-1 148
5638 80
5649-1 154
5649-1b 154
5649-1c 155
5649-2 156
5649-3a 156
5649-3d 157
5649-3e 158
5649-3f 158
5649-3g 159
5649-3h 160
5649-4 160
5649-5 161
5649-5a 161
5649-5c 162
5649-5d 163
5649-5e 163
5649-5f 163
5649-9 164
5649-9a 164
5649-9b 165
5649-9c 165
5649-9d 166
5649-9e 167
5649-9f 167
5654-1 148
5655 150
5657 151
5660 151
5660-1 152
5661 153

5809 204
6290 112
6290-1 113
6292 114
6291-1 114
6291 114
6292-1 116
6293 116
6294 117
6294-1 119
6295 119
6297 119
6298 119
6299 120
6301 120
6302 121
6306-1 121
6308 122
6309 124
6309-2 125
6310-1 126
6310-2 128
6310-3 128
6310-6 129
6310-7 129
6310-8 130
6310-10 131
6310-11 131
6310-11a 131
6310-12 132
6310-13a 133
6310-14 133
6310-15 134
6310-16 134
6310-17 134
6310-18 134
6310-19 134
6310-20 134
6310-21 134
6310-22 134
6310-23 134
6310-24 135
6310-25 135
6310-26 135
6310-27 135
6310-28 135
6310-28a 135
6310-29 135
6310-30 135
6310-31 136
6310-32 136
6310-33 136
6310-34 136
6310-35 136
6310-36 136
6310-37 137
6860 46
6887 46
6888 46
6889 47
6891 47
6906 48
6906-1 204
6907 48
6910 48
6917 49
6919 49
6922 49
6926 50
6945 50
6948 50
6948-1 51
6948-1a 51
6949 51
6954 51
6956-22 89
6956-23 90
6956-24 90
6956-25 91
6956-26 92
6956-27 92
6956-28 93
6956-29 94
6956-30 94
6956-31 95
6956-32 95
6956-33 95
6956-34 96
6956-35 96
6956-36 97
6956-37 97
6956-38 98
6956-39 99
6964-1 52
6965 53
6966 54
6967 55
6968 57
6969 57
6970 58
6971 58
6972 59
6973 60
6974 60
6975 60
6976 61
6977 61
6978 62
6979 62
6980 62
6981 63
6982 63
6983 64
6984 64
6985 65
6986 66
6987 66
6988 66
6989 67
7181 69
7182 69
7204 70
7204-1a 72
7205 72
7214 204
7246 104
7247 104
7248 105
7248-1 106
7248-2 106
7249 107
7249-1 108
7249-2 108
7249-3 109
7250 109
7251 110
7251-1 110
7421 205
7464 205
7465 205
7467 205
7479 206
7489 81
7557 81
7558 82
7558-1 82
7558-2 82
7558-3 83
7558-4 83
7558-5 83
7558-6 84
7558-7 84
7558-17 87
7558-18 87
7563 87
7572 88
8324 196
8325 197
8326 197
8327 197
8328 197
8329 198

8331 198
8332 198
8763 100
8843 100
8863 100
8869 102
7558-8 84
7558-9 84
7558-10 85
7558-11 85
7558-12 85
7558-13 86
7558-14 86
7558-15 86
7558-16 87
8874 102
9180 103
12603 137
12603-1 139
12603-2 139
12607-1 140
12614-2 140
12619 141
13421-17 111

SUBJECT INDEX

	SECTION	PAGE
ABANDONMENT —		
Inter-county or Main Market Road	1189	8
ABUTTING OWNER —		
Assessment for improvement	1214	20
Assessment for road in county system	6967	55
Not to be relieved from assessment	1217	24
Notice of change of grade	6956-29	94
Removal of obstructions	7204-1a	72
ABUTTING PROPERTY —		
Assessment for maintenance and repair	1224	27
Assessment not to exceed twenty percent of valuation	1217	24
Improvements outside of municipality	6981	63
APPEAL —		
To probate court from finding of commissioners	6979	62
APPORTIONMENT OF COST —		
On main market and inter-county highway	1214	20
ADVERTISEMENT —		
Bids for letting of contract	6985	65
ADVERTISING SIGNS —		
Unlawful on public highway	7204-1a	72
ANIMALS —		
On public highways	5809	204
APPROPRIATIONS —		
For fiscal year	5649-3g	159
Limit of aggregate	5649-3g	159
State aid for county system	6971	58
Supplementary	5649-3h	160
APPROPRIATION OF PROPERTY —		
Grade crossing elimination	6956-33	95
Improvements outside of municipality	6978	62
Joint county and railroad bridge	7558-4	83
	7558-14	86
ASSESSMENTS —		
Bond issue in anticipation of collection	5630-1	148
For lighting outside of municipalities	3436	78
For main market or inter-county highway	1214	20
Improvements outside of municipality	6981	63
	6982	63
Limitation for maintenance and repair	1224	27
Limitation of, on abutting property	1217	24
Reduction of, by county commissioners	1214-3	22
Special duplicate	6983	64

	SECTION	PAGE
ATHENS COUNTY—		
Authorization of highway assessments		207
ATLANTIC AND PACIFIC HIGHWAY—		
Description of	1189-1	9
AUDITOR OF STATE—		
Issue of warrant to county	6970	58
BIDS—		
Advertisement for	6985	65
Advertisement for, by director of highways	1206	16
Advertisement for Improvement of state roads	1206	16
BOND—		
For performance of contract	6986	66
BOND ISSUE—		
Advertisement and sale	6984	64
Authority of tax commission relative to	5649-9f	167
Classification of maturities	2295-9	144
Grade crossing elimination	6956-35	96
In anticipation of special assessments	5630-1	148
	6984	64
Joint county and railroad bridge	7558-15	86
Refunding	5657	151
Serial form required	2295-12	144
Short-time notes in anticipation of	5654-1	148
Tax levy outside of limitation by vote	5649-9a	164
To pay final judgment	2295-8	143
When not submitted at November election	5649-9b	166
BRIDGES—		
Additional proposals	2345	80
Contract for construction of joint	7558-2	82
In counties having planning commission	4366-17	202
Joint county and railroad	7558	82
Plans and specifications	2344	80
BRIDGES — (See also Joint Bridges.)		
BRIDGES AND CULVERTS—		
Apportionment of cost	1224	27
Removal of obstructions	7204	70
State aid for, in municipalities	1197-1	13
BUDGET—		
Adoption of, for political subdivisions	5649-3b	157
Submission to County Auditor	5649-3d	157
BUDGET COMMISSION—		
Determination of, on encumbered balances	5649-3f	158
Sinking fund levy not reduced	5649-1b	154
CERTIFICATES—		
Not required for separate items	5660-1	152
Relative to county system of highways	6970	58
CERTIFICATES OF INDEBTEDNESS—		
In anticipation of revenue	5655	150

	SECTION	PAGE
COMMISSIONER OF MOTOR VEHICLES—		
Appointment and salary	6290-1	113
COMMON PLEAS COURT—		
Improvement of overhead bridge	8869	102
COMPENSATION AND DAMAGES—		
Application for	6889	47
Hearing of claims	6977	61
Improvement outside of municipality	6979	62
COMPETITIVE BIDS—		
When not required	6948-1	51
CONTRACT—		
Award of, by director of highways	1206	16
Bond for faithful performance	6986	66
Certificate of director of finance	2288-2	142
Certificate of fiscal officer	5660	151
Construction of joint bridge	7558-2	82
For construction of roads in county system	6968	57
For maintenance and repair of state roads	1224	27
Method of payment on	6987	66
Notice of bid for	6985	65
Penalty for, without certificate	5661	153
Prior to issue of bonds	5654-1	148
COST OF CONSTRUCTION—		
Method of payment	6987	66
COUNTY AUDITOR—		
Calculation of tax rate	5649-9a	164
Deputy commissioner of motor vehicles	6291-1	114
COUNTY COMMISSIONERS—		
Appeal from findings to probate judge	6979	62
Appropriations for fiscal year	5649-3g	159
Appropriations of emergency repair fund	2792-1	68
Authority relative to grade crossings	6956-22	89
Authority to reduce special assessments	1214-3	23
Authorized to establish ferry	7489	81
Bonds in anticipation of assessments	5630-1	148
Bond issue in anticipation of assessments	6984	64
Change of highway grade	7558-3	83
Classification of county and township roads	7249-2	108
Construction by force account	6948-1	51
Contract for joint bridge	7558-2	82
Co-operation with planning commission	4366-13	201
Designation of roads in county system	6966	54
Duties relatives to change of grade	6956-25	91
Duties relatives to county system	6968	57
Duties relative to plans and specifications for bridges	2344	80
Improvements in platted lands	6976	61
Improvement of streets outside municipalities	6973	60
Issue of certificates of indebtedness	5655	150
Issue of refunding bonds	5657	151
Joint county and railroad bridges	7558	82

	SECTION	PAGE
Lease of Federal machinery and equipment	1190-2	10
May assume township's share of cost	1217	24
Organization of board	2400	43
Procedure relative to joint bridge	7558-11	85
Purchase of motor vehicles	2412-1	43
Repair of damage to county or township roads	6964-1	52
Rules and regulations relative to motor trucks	7249-3	109
Signs relatives to weight of vehicles	7250	109
Supplementary powers and duties	6989	67
Tax levy for county's share of state highways	1222	25
COUNTY PLANNING COMMISSION—		
Organization and maintenance	4366-14	201
COUNTY ROADS—		
Classification relatives to motor trucks	7249-2	108
Damages to, when paid by state	1231-8	29
Repair of damage to	6964-1	52
COUNTY SYSTEM OF HIGHWAYS—		
Apportionment of cost	6967	55
Construction without co-operation of township	6969	57
Creation of	6965	53
State aid for	6971	58
COUNTY SURVEYOR—		
Authority and duties	2792	68
Authority relative to emergency repairs	2792-1	68
Duties relative to assessments	6982	63
Duties relative to county system	6967	55
Duties relative to obstructions on highways	7204	70
Election and term	2782	68
Improvement outside of municipality	6988	66
CURRENT EXPENSE—		
Definition of	2295-7	143
DAMAGES—		
To county and township roads by construction of state roads	1231-8	29
DEBT. (See Indebtedness.)		
DEDICATION OF HIGHWAY—		
In connection with joint bridge	7558-12	85
DIRECTOR OF FINANCE—		
Certificate as to available funds	2288-2	142
DIRECTOR OF HIGHWAYS AND PUBLIC WORKS—		
Appeal from, on grade crossing	6956-39	99
Authority for construction of state roads without co-operation	1202	14
Authority relative to extension of state road thru village	1193-3	13
Authority relative to inter-county and main market highways	1189	8
Authority relative to maintenance and repair of state highways	1224	27
Authority to change line of improvement	1202	14
Authority to erect buildings	1202	14

	SECTION	PAGE
Construction by force account	6948-1a	51
Change of grade on state roads	6956-37	97
Designation by of unloading point	1231-10	30
Duty relative to gasoline tax	5538	175
Duty relative to obstructions on highways	7204-1a	72
Excess weight of motor trucks	7247	104
Hearing relative to change of grade	6956-24	90
Investigations by, of damaged county or township roads	1231-9	30
Lease of road equipment to counties	1190-2	10
Railway crossing elimination	6956-38	98
Removal of obstructions	7204	70
Signs relative to weight of vehicles	7250	109
When authorized to repair damaged county or township roads	1231-8	29
ELECTION —		
Bond issue and tax levy	5649-9a	164
Increase of tax levy	5649-5a	161
EMERGENCIES —		
Tax levy for	5649-4	160
EMERGENCY REPAIRS —		
Duties of county surveyor	2792-1	68
EXPENDITURE —		
Certificate not required for separate item	5660-1	152
Certificate of fiscal officer	5660	151
Penalty for, without certificate	5661	153
FEDERAL AID —		
Appropriations for state highways		32
Rules and regulations		36
FERRY —		
County may establish	**7489**	**81**
FISCAL OFFICER —		
Certificate necessary for expenditures	5660	151
Certificate of maximum indebtedness	2295-10	145
Certification of additional receipts	5649-3f	158
Certification of tax for judgment	5649-1c	155
Definition of term	2295-6	142
Duty relative to final judgments	2295-8	148
Penalty for false certificate	5661	153
When certificate not required	5660-1	152
FISCAL YEAR —		
Adoption of budget for	5649-3d	157
Appropriations for	5649-3g	159
FORCE ACCOUNT —		
Certificate of auditor of state	6970	58
Construction of inter-county highways	6948-1a	51
Construction of roads by	6948-1	51
Use of, on county system	6968	57

	SECTION	PAGE
FRANCHISES—		
For use of public highways	7204	70
FREEMAN-COLLISTER LAW. (See Motor Transportation Companies.)		
GASOLINE TAX—		
Certificate of dealer	5528	171
Creation of rotary fund	5539	176
Definition of terms	5526	169
Distribution, how made	5537	174
Duty of director of highways	5538	175
Monthly payment to state treasurer	5531	172
Monthly statement of tax commission to state auditor	5530	172
Penalty for illegal sale	5533	173
Penalties for law violation	5536	174
Purpose and exemptions	5527	170
Rate charged	5527	170
Refund determined by tax commission	5534	173
Statement of dealer to purchaser	5532	172
Sworn monthly statement of dealer	5529	171
Tax commission to prescribe forms	5535	173
GRADE CROSSINGS. (See Railway Crossings.)		
GRISWOLD LAW—		
Definition of terms	2295-6	142
HIGHWAYS—		
Removal of obstructions	7204	70
INDEBTEDNESS—		
Certification of, by fiscal officer	2295-10	145
In anticipation of current revenue	5655	150
Maximum period of bond issue	2295-9	144
Prohibited for operating expenses	2295-7	143
INTER-COUNTY HIGHWAYS—		
Abandonment of	1189	8
Construction by force account	6948-1a	51
Extension of, thru village	1193-3	13
Improvement without co-operation of county or township	1202	14
Liability for damage to	7251	110
Maintenance and repair	1224	27
Maintenance and repair within villages	1224-2	28
Maximum mileage of	1189	8
Not included in county system	6966	54
Proportion of cost to be paid by state	1213	19
	1213-1	19
Railway crossing grade	6956-37	97
INVENTORY—		
By township trustees	3270-1	74
By county commissioners	2504-1	52

	SECTION	PAGE
JOINT BRIDGE—		
Appropriation of property for	7558-4	83
	7558-14	86
Bond issue for	7558-15	86
Change of highway grade	7558-3	83
Claims for compensation and damage	7558-7	84
Dedication of highway	7558-12	85
Definition	7558-1	82
Determination to proceed	7558-9	84
Filing of plans	7558-6	84
Plans and specifications filed	7558-10	85
Proceedings	7558-13	86
Publication of notice	7558-16	87
Tax levy for	7558-15	86
JUDGMENT—		
Bond issue for	2295-8	143
Certification of tax for	5649-1c	155
JUDGMENT FUND—		
Transfer of monies to	2295-13	146
LAND—		
Road thru, for use of another	6887	46
LIEN. (See Mechanic's Lien.)		
LIGHTING—		
Outside of municipalities	3428	76
Petition for, outside of municipalities	3429	76
MACHINERY AND EQUIPMENT—		
Federal, may be leased to counties	1190-2	10
Lease of land for storage	1202	14
Purchase of, by director of highways	6948-1a	51
MAIN MARKET ROADS—		
Abandonment of	1189	8
Apportionment of cost	1214	20
Extension of, thru village	1193-3	13
Improvement without co-operation of county or township	1202	14
Liability for damage to	7251	110
Maintenance and repair by director of highways	1224	27
Maintenance and repair of, within villages	1224-2	28
Maximum mileage	1189	8
Not included in county system	6966	54
Proportion of cost to be paid by state	1213	19
	1213-1	19
Railway crossing grade	6956-37	97
MAINTENANCE AND REPAIR—		
Inter-county or main market roads within villages	1224-2	28
MATERIALS. (See Road Material.)		
MATERIAL AND EQUIPMENT—		
Designation of unloading point	1231-10	30

	SECTION	PAGE
MECHANIC'S LIENS—		
Applicable to road improvement	8324	196
MEIGS COUNTY—		
Authorizing of highway assessments		207
MOTOR TRANSPORTATION COMPANIES—		
Application for certificate	614-91	188
Application for change of route	614-93	190
Application to inter-state commerce	614-101	195
Applications and complaints	614-89	188
Authority of public utilities commission	614-86	181
Certificate of convenience and necessity	614-87	183
Consent of commission necessary for operation	614-88	187
Death or dissolution of partnership	614-87a	187
Definitions	614-2	177
	614-84	179
Distribution of revenue	614-96	192
Examination and license of drivers	614-97	193
Liability insurance or bond required	614-99	194
Local fees and regulations	614-98	194
Operation on specified routes	614-92	189
Operation over irregular route	614-94a	191
Penalties for law violations	614-100	195
Rate of taxation	614-94	190
Rules governing applications for certificates	614-90	188
Tax funds relative to	614-95	192
MOTOR TRUCKS—		
Classification of roads relative to	7249-2	108
Display placard prescribed	7249-1	108
Excess weight, when allowed	7247	104
Lease of, by county commissioners	1190-2	10
Liability for damage	7251	110
Maximum load allowed on roads	7246	104
Maximum width, height and length	7248-2	106
Penalty for violation of law	13421-17	111
Restrictions on speed and weight	7249	107
Rules and regulations of county commissioners	7249-3	109
Seasonable reduction of weight and speed	7250	109
Sheriff to enforce law	7251-1	110
Weight and tire width prescribed	7248	105
Weight on one axle	7248-1	106
MOTOR VEHICLES—		
Actions for injury to person or property	6308	122
Annual license tags	6291	114
Application for registration	6924	117
Appointment of deputy commissioners	6291-1	114
Apportionment of tax on commercial car	6295	119
Assignment of number	6298	119
Bill of sale and duplicate	6310-6	129
Bill of sale filed with clerk of courts	6310-10	131
Bill of sale for used cars	6310-7	129
Bill of sale misrepresentations	6310-12	132

	SECTION	PAGE
Bill of sale, sworn statement	6310-11a	131
Bill of sale, when lost	6310-13a	133
Bill of sale, definitions	6310-3	128
Certificate and number plate	6297	119
Clerk of courts, duties	6310-11a	131
County commissioners to regulate use	2412-2	44
Creation of bureau	6290-1	113
Definitions of terms	6290	112
Dimming headlights	12614-2	140
Distribution of license tags	6309-2	125
Duties of purchaser	6310-8	130
Headlights to be dimmed	12614-2	140
Index of license numbers	6299	120
Injury to person or property	6308	122
License fee for commercial car	6292-1	116
License fee for passenger car	6292	114
Lighting devices approved	6310-2	128
Lights required	6310-1	126
Manufacturer's and dealer's license	6301	120
Penalty for bill of sale violations	6310-14	133
Penalty for stealing	12619	141
Penalty for violation of traffic rules	6310-15 to 6310-37	137
Purchase of, by county commissioners	2412-1	43
Reciprocal agreements with other states	6306-1	121
Reckless operation	12603-1	139
Report of county auditor	6309	124
Speed limitations	12603	137
Sworn statement of ownership	6310-13a	133
Tax, how distributed	6309-2	125
Traffic rules	6310-15 to 6310-37	134
Violation of speed laws	12603-2	139
Weight and horse-power	6923	116
MUNICIPALITIES—		
State aid for bridges and culverts	1197-1	13
NEWSPAPER—		
Publication of notice	7558-16	87
NOTES—		
In anticipation of bond issue	5654-1	148
NOTICE—		
Appropriation of property	6978	62
Construction of joint bridge	7558-7	84
Hearing on change of grade	6956-25	91
Hearing on petition for road thru land of another	6888	46
Improvements in platted lands outside municipalities	6977	61
Letting of bids for contract	6985	65
OBSTRUCTIONS—		
Removal by abutting owners	7204-1a	72
Removal from highways	7204	70

	SECTION	PAGE
OPERATING EXPENSES —		
Indebtedness prohibited	2295-7	143
PAYMENT —		
Method of, on contract	6987	66
PENALTY —		
Enforcement of motor truck law	13421-17	111
Violation of Vorys' Law	5661	153
PETITION —		
For road thru land of another	6887	46
Improvement of streets outside of municipalities	6974	60
Lighting of streets outside of municipalities	3429	76
Relative to change of grade	6956-26	92
What persons not counted	6975	60
PLANNING COMMISSION —		
Territory outside of municipality	3586-1	200
PLANS AND ESTIMATES —		
County surveyor to make, relative to platted lands	6976	61
For county system of highways	6967	55
Improvements in county system	6968	57
Improvement outside of municipality	6980	62
Relative to joint bridge	7558-10	85
PLATTED LANDS —		
Plans and specifications for improvement	6976	61
Streets outside of municipalities	6973	60
PROBATE COURT —		
Appeal from finding of commissioners	6979	62
PUBLIC FUNDS —		
Certificate as to expenditure	2288-2	142
PUBLIC IMPROVEMENT —		
What cost of construction to include	2295-11	146
PUBLIC OFFICER —		
Liable for expenditure without certificate	5661	153
PUBLIC UTILITIES COMMISSION —		
Appeal on grade crossing elimination	6956-39	99
Authority over motor transportation companies	614-86	181
Hearing on application for certificate	614-91	188
PUBLIC UTILITY —		
Application of revenues	5649-1b	154
PUBLICATION —		
Notice of improvement in platted land	6977	61
Notice of petition	6888	46
RAILROADS —		
Failure to co-operate in change of grades	6956-25	91

	SECTION	PAGE
RAILWAY CROSSINGS—		
Agreement with county and township	6956-38	98
Appeal to public utilities commission	6956-39	99
Apportionment between railroads	6956-27	92
Apportionment of costs	6956-28	93
Appropriation of property	6956-33	95
Change of grade on main market or inter-county highway	6956-22	89
Change on main market roads	6956-23	90
Cost as lien on property of company	6956-36	97
Cost to street or interurban railway company	6956-36	97
Duty of director of highways	6956-24	90
Finding of court	6956-27	92
Height above grade	6956-32	95
Maintenance of overhead bridge	8869	102
Notice to abutting owners	6956-29	94
Payment of cost of elimination	6956-38	98
Payment of railroad's portion	6956-31	95
Plans submitted by railroad	6956-25	91
Public hearing	6956-25	91
Repair of crossings and approaches	6956-34	96
Service of summons	6956-30	94
Tax levy for	6956-35	96
REFUNDING BONDS—		
Authority of tax commission	5649-9f	167
County commissioners may issue	5657	151
RIGHT-OF-WAY—		
Authority of director of highways to widen	1202	14
ROAD—		
Thru land of another	6887	46
ROAD MATERIAL—		
Lien for furnishing	8324	196
Purchase of, by director of highway	6948-1a	51
SERIAL BOND—		
Issue mandatory on sub-divisions	2295-12	146
SERPENT MOUND PARK—		
Construction of highway to		207
SHERIFF—		
Enforcement of motor truck law	7251-1	110
SINKING FUND—		
Tax levy for	2976-26	148
	5649-1	154
SINKING FUND LEVIES—		
Not reduced by budget commissioners	5649-1b	154
SINKING FUND TRUSTEES—		
Continuation of	2295-14	146

	SECTION	PAGE
SPECIAL ASSESSMENTS—		
For roads in county system	6967	55
STATE AID—		
Certificate for, transmitted to state auditor	6970	58
For bridges and culverts in municipalities	1197-1	13
Proportion of entire cost	1213	19
STREETS—		
Maintenance in newly platted territory	6906-1	204
TAX COMMISSION—		
Authority relative to gasoline tax	5528	171
Authority relative to refunding bonds	5649-9f	167
Authority relative to submission of bond issue	5649-9d	166
Authority to modify budget estimates	5649-3f	158
Forms for gasoline tax	5535	173
TAX LEVY—		
Apportionment in newly platted territory	6906-1	204
For any purpose bonds may be issued	5649-5d	163
For county's proportion of cost	1222	25
For grade crossing elimination	6956-35	96
For township's share of cost of improvement	1222	26
Increase by vote of people	5649-5	161
Interest and sinking fund	5649-1	154
Joint county and railroad bridge	7558-15	86
Limitations	5649-3a	156
Outside limitations for emergencies	5649-4	160
Special only for specified purpose	5649-5e	163
TAX RATE—		
Certification for sinking fund	2976-26	148
Motor transportation companies	614-94	190
TAXES—		
Surplus, how expended	7421	205
TIRES—		
Width prescribed for motor truck	7248	105
TOWNSHIP—		
Amount received from the state	6971	58
TOWNSHIP ROADS—		
Classification relative to motor trucks	7249-2	108
Repair of damage to	6964-1	52
When damages to, paid by state	1231-8	29
TOWNSHIP TRUSTEES—		
Annual inventory by	3270-1	74
Authority to contract for artificial lights	3440-1	79
Contract for furnishing lights	3435	77
Duties relative to lighting outside municipalities	3433	77
Employment of lighting inspectors	3438	78
Expenditure of funds	3277	74

Failure to co-operate in construction of county system	6969	57
May assume counties' share of cost of improvement	1217	24
Report to county commissioners on township highways	6965	53
Tax levy for construction of state highway	1222	26
TRAFFIC REGULATIONS. (See Motor Vehicles.)		
TREASURER OF STATE—		
Duties relative to motor transportation taxes	614-95	192
TRUCKS. (See Motor Trucks.)		
VILLAGE—		
Extension of highway thru	1193-3	13
Repair of state roads within	1224-2	28
VORYS' LAW—		
Penalty for violation of	5661	153
WEIGHT—		
Excess allowed for motor trucks	7247	104

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